

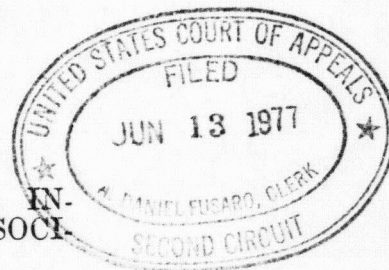
***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6092

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT



SNEAKER CIRCUS, INC., BLAZER SPORTS INTERNATIONAL, INC., and BOB WOLF ASSOCIATES, INC.,

Plaintiffs-Appellants,

—against—

JIMMY CARTER, President of the United States, ROBERT S. STRAUSS, Special Representative for Trade Negotiations, STEPHEN J. LANDE, Deputy Special Representative for Trade Negotiations, and UNITED STATES INTERNATIONAL TRADE COMMISSION,

Defendants-Appellees.

On Appeal From the United States District Court For the Eastern District of New York

APPENDIX

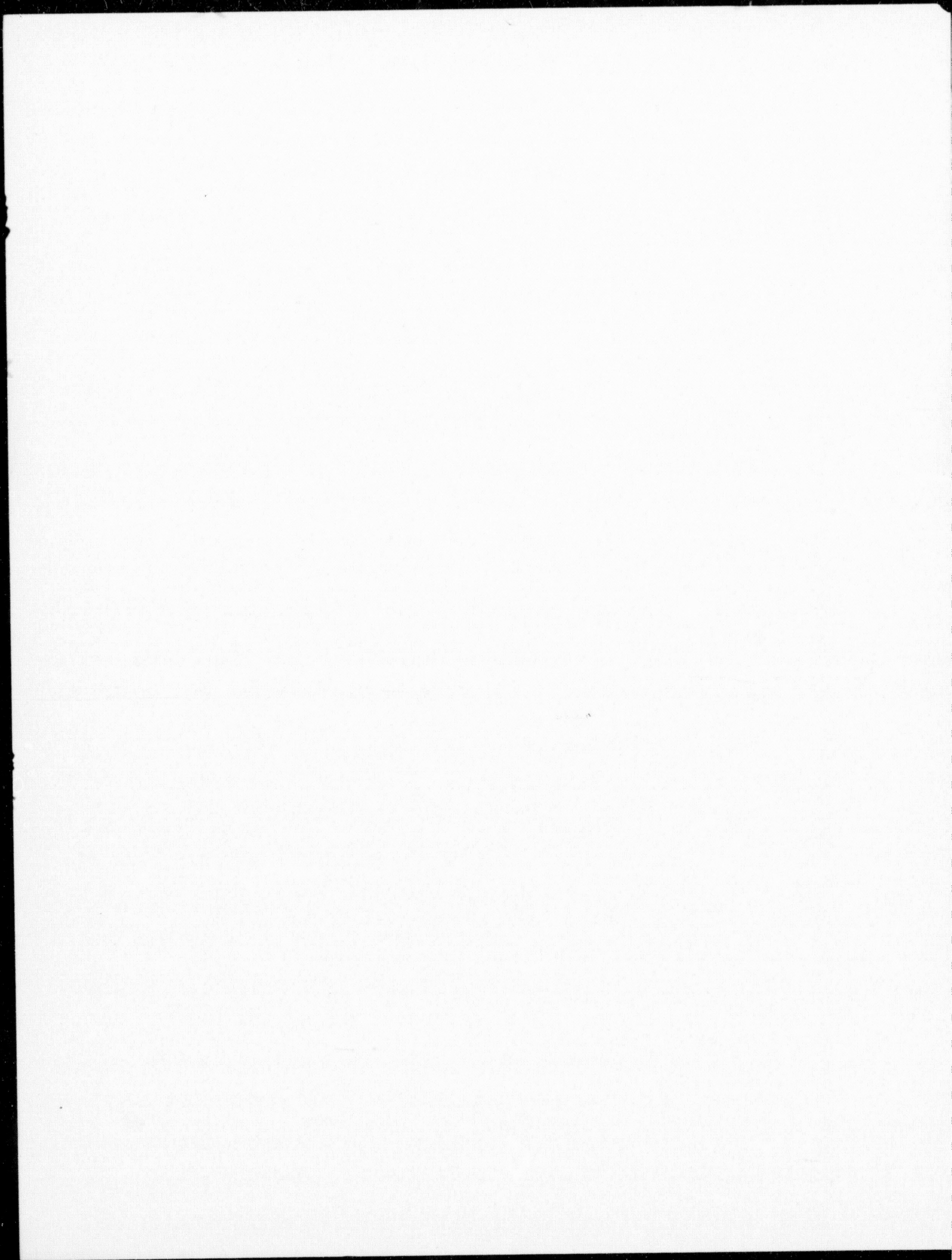
VINCENTI & SCHICKLER
Attorneys for Plaintiffs-Appellants
225 Broadway
New York, N. Y. 10007

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United States Attorney for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, N. Y. 11201

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INDEX

	PAGE
Docket Entries	1
Notice of Appeal	3
Memorandum and Order	4
Order to Show Cause For Temporary Restraining Order and Preliminary Injunction	11
Affidavit of Donald Kalfin	14
Exhibit A	30
Exhibit B	31
Exhibit C	32
Exhibit D	34
Exhibit E	37
Exhibit F	38
Exhibit G	52
Affidavit of Martin Bloom	54
Affidavit of Dominick Albanese	59
Exhibit H Submitted to the Court	62
Exhibit J Submitted to the Court	67
Exhibit K Submitted to the Court	68
Amended Complaint	72



Docket Entries

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PLAINTIFFS

SNEAKER CIRCUS, INC. ET AL

SNEAKER CIRCUS, INC., BLAZER SPORTS
INTERNATIONAL INC. AND BOB WOLF
ASSOCIATES, INC.

DEFENDANTS

CARTER, JIMMY, ET AL

JIMMY CARTER, PRESIDENT OF THE
UNITED STATES, ROBERT S. STRAUSS,
SPECIAL REPRESENTATIVE FOR TRADE
NEGOTIATIONS, STEPHEN J. LANDE,
DEPUTY SPECIAL REPRESENTATIVE FOR
TRADE NEGOTIATIONS AND UNITED
STATES INTERNATIONAL TRADE COM-
MISSION.

CAUSE

Action for declaratory judgment that defts imposing quota agreements are null
and void as not in compliance with congressional authority under the Trade
Act of 1974.

ATTORNEYS

For Pltff:

Vincenti & Schickler
225 Broadway
New York NY 10007
964 8181

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77C 1135

DATE

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PROCEEDINGS

6/2/77	complaint file.d.summons issued.	tk (1)
6/3/77	Summons returned and executed, filed.	(2)lg.
6-7-77	Memo of law in opposition to pltffs' motion for a tro filed.	(3)
6-7-77	Further memo in support of pltffs' motion for a stay pending hearing on preliminary inj filed. mg	(4)
6-7-77	Amended complaint filed. mg Jury demanded.	(5)
6-7-77	Pltffs' reply memorandum filed. mg q	(6)
6/8/77	Before COSTANTINOJ. - Case called. Motion for temporary restraining order and preliminary injunction and jurisdiction argued. Decision reserved. All briefs by 6/9/77 at 2:00 p.m. tk	----
6-8-77	Supplemental memorandum on the issue of subject matter jurisdiction in support of defts' motion to dismiss filed. ld	(7)
6-8-77	Pltffs' further memorandum of law on question of subject matter jurisdiction filed. ld	(8)
6-10-77	Copy of letter dtd 6-9-77 to J. Costantino from Vito Vincenti re pltffs' claims with respect to violation of section 2251(e of the Trade Act etc filed. mg	(9)
6-10-77	Copy of letter dtd 6-10-77 to J. Costantino from AUSA Dolan re Vito Vincenti's letter dtd 6-9-77 (doc. #9)	(10)
6/10/77	BY COSTANTINO, J. MEMORANDUM AND ORDER - that action is DISMISSED filed.	(11)
6/13/77	Unsigned order to show casue why an order should not be made herein preliminarily enjoining defts, etc, restraining them from entering executing, any act in fruthrance of certain agreements, referred to in the complaint(service made on 6/1/77, and submitted 6/2/77). and memorandum of alw in support of pltffs motion for a temporty restraining order and a preliminary injunction filed. tk	(12)
6-13-77	JUDGMENT dtd 6-13-77 dismiss ng the complaint filed. mg	(14)
6-13-77	NOTICE OF APPEAL filed. Copy to USA, and to C of A. mg	(15)

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----	x
	:
SNEAKER CIRCUS, INC., BLAZER SPORTS	:
INTERNATIONAL, INC., and BOB WOLF	:
ASSOCIATES, INC.,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
JIMMY CARTER, President of the United	:
States, ROBERT S. STRAUSS, Special	:
Representative for Trade Negotiations,	:
STEPHEN J. LANDE, Deputy Special	:
Representative for Trade Negotiations,	:
and UNITED STATES INTERNATIONAL TRADE	:
COMMISSION,	:
	:
Defendants.	:
	:
-----	x

77 C. 1135

NOTICE OF APPEAL

S I R :

PLEASE TAKE NOTICE, that the plaintiffs, SNEAKER CIRCUS, INC., BLAZER SPORTS INTERNATIONAL, INC., and BOB WOLF ASSOCIATES, INC., hereby appeal to the United States Court of Appeals for the Second Circuit from an order of Hon. MARK A. COSTANTINO, United States District Judge, dated and entered on June 10, 1977, which dismissed the above entitled action for lack of subject matter jurisdiction, and from each and every part of said order.

Dated, New York, N. Y.
June 11, 1977

Yours, Etc.

VINCENTI & SCHICKLER
Attorneys for Plaintiffs
By [Signature]
(Member of the Firm)
225 Broadway
New York, N. Y. 10007
(212) 964-8181

TO:

Clerk of the United States District Court
for the Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, N. Y. 11201

DAVID G. TRAGER
United States Attorney for the
Eastern District of New York
Attorney for Defendants
225 Cadman Plaza
Brooklyn, N. Y. 11201

MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

1977

SNEAKER CIRCUS, INC., BLAZER SPORTS
INTERNATIONAL, INC., and BOB WOLF
ASSOCIATES, INC.,

Plaintiffs,

-against-

JIMMY CARTER, President of the United
States, ROBERT S. STRAUSS, Special
Representative for Trade Negotiations,
STEPHEN J. LANDE, Deputy Special Repre-
sentative for Trade Negotiations, and
UNITED STATES INTERNATIONAL TRADE
COMMISSION,

Defendants.

77-C-1135

MEMORANDUM
AND
ORDER

COSTANTINO, D. J.

APPEARANCES:

VINCENTI & SCHICKLER
225 Broadway
New York, New York 10007
Attorneys for plaintiffs.

DAVID G. TRAGER
225 Cadman Plaza East
Brooklyn, New York 11201
by Joan M. Dolan
Attorney for defendant

On April 1, 1977 the President of the United States, after receiving certain recommendations from the International Trade Commission (hereinafter " ITC ") directed his Special Representative for Trade negotiations to negotiate agreements with the government of South Korea and the Republic of China in order to limit the quantity of certain kinds of shoes to be exported from those countries to the United States during a four year period.

Although no formal agreements have yet been consummated, it is alleged that such agreements are due to be signed by the end of June.

Plaintiffs are, respectively, a retailer, wholesaler and importer of footwear who allege that they will be injured by the imposition of the quotas which they believe will be contained in the formal agreements. They seek (1) a declaratory judgment that the procedure culminating in the negotiations was unconstitutional and (2) an injunction preventing the defendants from consummating the formal agreements. More specifically, plaintiffs contend that the actions of the ITC and of the President failed to comply with certain requirements set forth in the Trade Act of 1974, 19 USC §2101 et seq.

Defendants have moved to dismiss the action on numerous grounds. Since this court concludes that pursuant to 28 USC §1582, exclusive jurisdiction over this controversy is vested in the United States Customs Court, the action must be dismissed.

In J.C. Penney Company -v- United States Treasury Department, 439 F.2d 63 (2d Cir.1971), cert. denied 404 U.S. 869 (1971) (herein after "J.C. Penney"), the United States Court of Appeals for the Second Circuit examined the history and purpose of 28 USC §1582, and concluded that " Congress intended the Customs Court to have exclusive jurisdiction of constitutional questions arising out of customs litigation. " 439 F. 2d at 67.¹/

1/
Jurisdiction under 28 USC §1582 lies exclusively in the Customs Court despite the existence of an otherwise valid grant of jurisdiction. to the District Court. J.C. Penney, supra at 68.

The test used in J.C. Penney to determine whether the Customs Court has exclusive jurisdiction over a given dispute was whether the dispute arises out of the "Customs Laws". See 439 F.2d at 67-68.

Agreements similiar to those involved in the case at bar have been held to be part of the customs laws. See Consumers Union of the United States -v- Committee for the Implementation of Textile Agreements, Slip Op. (D.C. Cir. April 20, 1977), at 5. Therefore, this court is without jurisdiction to entertain this action unless, as plaintiffs contend , the case falls within the narrow exception, recognized in J.C. Penney, Supra, at 68, of situations where no adequate remedy is available in Customs Court. Cf. Timkin Co. -v- Simon, 539 F.2d 221 (D.C. Cir. 1976); Consumers Union of the United States -v- Kissinger, 506 F.2d 136 (D.C. Cir. 1974).

In both Timkin and Consumers Union, Supra, the plaintiffs were precluded from bringing their claims before the Customs Court because of some particular circumstance involved in the case. The exercise of District Court jurisdiction was therefore proper on the grounds that no other form of judicial relief was available. If the plaintiff could have obtained judicial review of its claim in Customs Court, however, the Court of Appeals in Timkin " would not ~~have~~ hesitate [d] to reverse the District Court's assertion of jurisdiction" Timkin Co. -v- Simon, Supra at 226.

The plaintiffs here argue that because the agreements to be consummated will involve voluntary compliance by foreign governments with the quotas to be established , no action of United States Customs officials which would trigger Customs Court jurisdiction will occur. See 28 USC §1582. Plaintiffs assume that no goods in excess of the quotas will be shipped to the United States, and that therefore no decision of a Customs official excluding goods will have to be made. Thus, plaintiffs argue, they will not be able to file a protest pursuant to 28 USC §§1514 and 1582

which would enable them to bring their claim before the Customs Court. Accordingly, plaintiffs contend they will be precluded from seeking Customs Court review and that this court should therefore assert jurisdiction over this case. Defendants challenge plaintiffs speculation as to the events which might occur, arguing instead that circumstances could well arise in which Customs officials would act to exclude goods shipped to the plaintiffs.

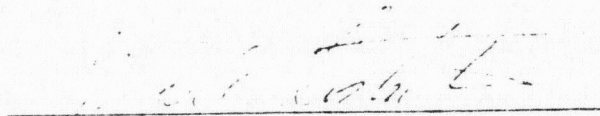
While it is true that at the present time, this case is not ripe for Customs Court review, that fact is not sufficient to deprive the Customs Court of its exclusive jurisdiction or to vest this court with jurisdiction. J.C. Penney, Supra at 66. Essentially plaintiffs are asking this court to determine that circumstances may arise under which Customs Court Review could never take place. That argument is clearly premature. This court is not prepared to speculate as to whether the appropriate actions which would trigger Customs Court jurisdiction may or may not take place. Nor is this court prepared, in the absence of a stronger indication from the Court of Appeals, to adopt a rule

that would confer jurisdiction on the District Court under the speculative circumstances presented here.

It may be that at some time in the future, events will occur which will vest this court with jurisdiction ; until such time as those events occur, however, exclusive jurisdiction over this case rests with the Customs Court.

Accordingly, the action must be dismissed.

SO ORDERED



U. S. D. J.

Dated: Brooklyn, New York
June 10, 1977

ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
SNEAKER CIRCUS, INC., BLAZER SPORTS
INTERNATIONAL, INC., and BOB WOLF
ASSOCIATES, INC.,

Plaintiffs,

-against-

JIMMY CARTER, President of the United
States, ROBERT S. STRAUSS, Special
Representative for Trade Negotiations,
STEPHEN J. LANDE, Deputy Special Repre-
sentative for Trade Negotiations, and
UNITED STATES INTERNATIONAL TRADE
COMMISSION,

Defendants.

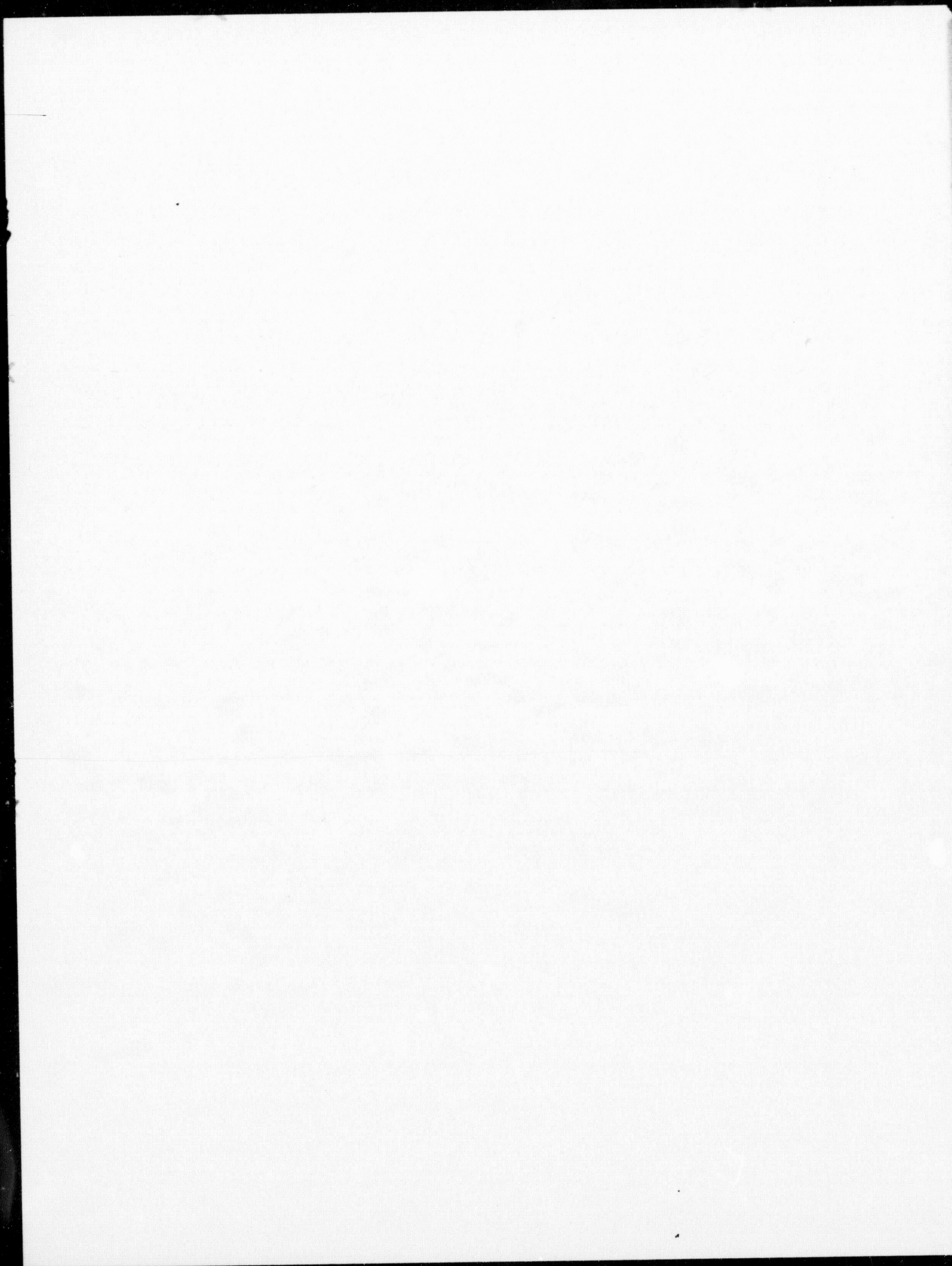
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~~XX XXXX~~

ORDER TO SHOW CAUSE
FOR TEMPORARY RESTRAIN-
ING ORDER AND PRELIMIN-
ARY INJUNCTION

-----X
Upon the summons and complaint, the annexed affidavits of
DONALD KALFIN, MARTIN BLOOM and DOMINICK ALBANESE, sworn
to May 31, 1977, and the exhibits annexed hereto, it is hereby

ORDERED, that the defendants show cause at a Term for
Motions to be held before Hon. Mark A. Costantino, a
Judge of this Court, in Courtroom No. 1, United States Court-
house, 225 Cadman Plaza East, Brooklyn, New York on June 2,
1977, at 3:00 P.M., or as soon thereafter as counsel can be
heard, why an order, pursuant to Rule 65(a) of the Federal
Rules of Civil Procedure, should not be made herein prelimin-
arily enjoining defendants, their agents, servants, attorneys,
and all persons acting in concert with any of them, restraining
them from entering into, executing, effectuating, performing any
other act in furtherance of certain agreements and understandings,
referred to in the complaint and annexed affidavits, between the
Government of the United States, on the one hand, and the Govern-
ments of the Republics of China and Korea, on the other, imposing
absolute quotas upon the importation into the United States of



certain types of non-rubber footwear, or in connection with carrying out any provisions of the same, and why plaintiffs should not have such other and further relief as to the Court may seem just and proper; and it is further

ORDERED, that pending the determination of this motion and the entry of an order thereon, defendants, their agents, servants, attorneys and all persons acting in concert with any of them, jointly and severally, are hereby enjoined and restrained from executing, effectuating or performing any other act in furtherance of the aforementioned agreements or understandings, or in connection with carrying out any provisions of the same; and it is further

ORDERED, that sufficient cause appearing therefor, let service of a copy of this order and the papers upon which it is made upon the defendants, on or before _____ M., on June _____, 1977, be deemed good and sufficient service.

Dated: Brooklyn, New York
June _____, 1977.

U.S.D.J.

AFFIDAVIT OF DONALD KALFIN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

SNEAKER CIRCUS, INC., BLAZER SPORTS
INTERNATIONAL, INC., and BOB WOLF
ASSOCIATES, INC.,

Plaintiffs,

77 CIV.

-against-

AFFIDAVIT

JIMMY CARTER, President of the United
States, ROBERT S. STRAUSS, Special
Representative for Trade Negotiations,
STEPHEN J. LANDE, Deputy Special Repre-
sentative for Trade Negotiations, and
UNITED STATES INTERNATIONAL TRADE
COMMISSION,

Defendants.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DONALD KALFIN, being duly sworn, deposes and says:

I am the President of the plaintiff, BLAZER SPORTS
INTERNATIONAL, INC. ("Blazer"), and I make this affidavit in
support of the instant motion for a temporary restraining
order and preliminary injunction, enjoining and restraining
defendants, and each of them, from executing, effectuating,
or performing any act in furtherance of foreign trade quota
agreements and understandings with the Republics of China and
Korea, or in connection with carrying out any provisions of
the same.

Plaintiffs motion for a temporary restraining order
and preliminary injunction should be granted because:

1. THE UNITED STATES INTERNATIONAL TRADE COMMISSION
("ITC"), failed to investigate and hold hearings required by the
Trade Act of 1974 ("Trade Act") and procedural due process, and
denying Blazer and other interested parties an opportunity to
be heard, as to whether "good cause" existed as a pre-requisite

to the ITC instituting a reinvestigation of the same subject matter within one year from the ITC'S issuance of their prior report; furthermore, the facts did not support the ITC's determination.

2. The President failed to make and issue the requisite and proper determination within 60 days of the delivery of the ITC'S report to him specified by the Trade Act;

3. The President did not follow the procedure provided in the Trade Act, requiring him to transmit to Congress on the day he proclaims his intention to negotiate orderly marketing agreements a document reporting to the Congress his reasons for taking a different form of relief than that recommended by the ITC.

4. The President did not comply with the Trade Act when he did not properly take into account the considerations which are specifically set forth in the Trade Act in making his determination as to the proper method and amount of import relief; and

5. The presidential action transgresses the maximum relief permissible under the Trade Act.

In short, the President has violated the Trade Act in four separate instances and has failed to follow the procedures and requirements expressly set forth therein. Moreover, the underlying report presented to the President by the ITC is invalid because the ITC did not investigate or hold hearings on a question which was a pre-requisite to the institution of its reinvestigation.

These violations make the presidential action imposing quota restraints upon the Republics of China and Korea improper, null and void and unconstitutional.

I have been in the footwear business for some 8 years. I have been President of Blazer for some 16 months. Blazer will be irreparably injured if the import quotas are imposed by the President upon the Republics of China and Korea preventing the importation of certain types of footwear into this country. Blazer is not in the import business. It is in the business of selling and distributing athletic footwear made of either leather, suede or vinyl at popular prices. Blazer's only source of supply for such footwear for the "popular" priced market, is that manufactured in and imported from the Republics of China and Korea. There is no manufacturer in the United States of comparable athletic footwear which Blazer can sell at "popular" prices. Accordingly, the imposition of the trade restrictions through absolute quotas upon the Republics of China and Korea will destroy Blazer's business and do harm to the general public who will not be able to purchase athletic footwear made out of leather, suede or vinyl at prices they can afford.

It is imperative that the President and his appointees be restrained from entering into the Quota Agreements with the Republics of China and Korea because of his violations of the express language and procedure of the Trade Act and the irreparable injury to Blazer that will be caused by the presidential actions.

THE FACTS

The following is a brief description of the events that took place and which led up to the action taken by the President. The inescapable conclusion from these events is that the ITC report is invalid because it failed to properly investigate and hold hearings with regard to the question of

"good cause". Furthermore, the President in at least four instances violated the express provisions and procedures of the Trade Act. Thus, any presidential imposition of trade quotas is improper, null and void. The facts are these.

On September 28, 1976, the Senate Finance Committee at the request of Senator William D. Hathaway, from the State of Maine, without prior consideration or investigation, in a five minute hearing, passed a resolution requesting the ITC to re-investigate the footwear industry because "[it] is the sense of the committee that changed circumstances, including imports and rapidly deteriorating economic conditions in the domestic footwear industry, constitute 'good cause' required by the Act." Before reaching this sense, the Committee did not hold public hearings or invite interested parties to present facts to the Committee as to the state of the footwear industry at that time. In fact, the Committee's sense, as will be shown further, was contrary to the available information.

Within a matter of days, interested parties involved in the selling and distribution of footwear in this country requested that the ITC thoroughly investigate and hold hearings on the question of whether "good cause" existed entitling the ITC to re-investigate the same subject matter covered by the Commission's previous report made less than a year earlier, on February 20, 1976 and rejected by the previous president. Annexed hereto as Exhibit "A" is a copy of one such telegram sent to the Chairman of the ITC requesting such a hearing.

On October 5, 1976, the ITC met in closed session without prior hearing. At that time, the Chairman of the ITC suggested to the Commission that they hold hearings on the question of whether "good cause" existed entitling them to reinvestigate the footwear industry within a year after their last report. The

Chairman's suggestion was voted down 4 to 2 by the other commissioners of the ITC. At that same meeting, the ITC then voted 4 to 2 that "good cause" existed entitling the ITC to reinvestigate the footwear industry. The ITC'S announcement published in the Federal Register of the action taken on October 5, 1976 (a copy of which is annexed hereto as Exhibit "B"), similarly noted that a determination was made that "good cause" existed and failed to set forth any basis for the determination or that any investigation or hearings were held on that vital question.

The information available to the ITC and I believe in its possession at that time showed that the domestic footwear industry had actually improved since the last report issued by the ITC and that there was no basis for any determination that "good cause" existed. Production in the United States had increased some 17% during that nine month period and employment had increased by 15,000, while the ratio of imports to consumption, a key indicator, had remained approximately the same.

Interested parties in the footwear industry were prevented from presenting to the ITC factual evidence as to whether or not "good cause" existed, the right to be heard on whether or not 'good cause' existed and whether the ITC was entitled to reinvestigation within such a short interval.

Other attempts were made by interested parties to get a hearing on this crucial question as to whether "good cause" existed for the reinvestigation of the footwear industry. For instance, the American Retail Federation, on November 15, 1976 presented a petition to the ITC, (a copy of which is annexed hereto as Exhibit "C"), requesting a hearing on the question of

"good cause" and that it be given an opportunity to be heard on that important question. No hearing was granted.

In early December, the ITC'S staff circulated a memorandum, dated November 30, 1976, (a copy of the memorandum is annexed hereto as Exhibit "D") containing statistical charts which can lead to one conclusion, that the situation in the domestic footwear industry had improved since the issuance of the last report, production was up substantially; and employment was up, unemployment down and the ratio of imports to consumption had remained relatively the same. Blazer was prevented from bringing other important facts to the attention of the ITC since it and other interested parties were not afforded an opportunity to be heard prior to the ITC'S determination that "good cause" existed.

The ITC did finally hold hearings in December 1976, but not for the purpose of hearing evidence as to whether "good cause" existed. These hearings were devoted to the ITC'S reinvestigation instituted after the ITC had made its "good cause" determination without the presentation of evidence or affording interested parties the opportunity to be heard.

On February 8, 1977, the ITC rendered its reports to the President making its determination, findings and recommendations (a copy of the ITC'S report to the President is being filed with the court along with plaintiffs' application). The report is significantly devoid of any factual basis that "good cause" existed entitling the ITC to commence this unusual reinvestigation within a year.

The ITC in its report to the President recommended the imposition of a tariff-rate quota system for the ensuing five-year period, applied to the footwear imports from any country, with existing quotas and increased rates for such footwear importation outside quota limits. The ITC specifically recommended against the imposition of an absolute quota, which it stated could eliminate imports as a competitive force above the level of the quota.

On April 1, 1977, the President issued his first statement with regard to the recommendations of the ITC. The President announced that he was very reluctant to restrict international trade. He had decided to reject the action recommended by the ITC and had directed defendant Strauss, to negotiate and conclude necessary agreements with foreign exporting countries for modest mandatory limits on exports of footwear into the United States.

On the same day, the President issued a "Memorandum for the Special Representative for Trade Negotiations," dated April 1, 1977 containing his determination as required by the Trade Act and the Memorandum was published in the Federal Register on Wednesday, April 6, 1977, (a copy of the Memorandum as published in the Federal Register is annexed hereto as Exhibit "E"). As can be seen from the face of the Memorandum, it does not set forth the method and amount of relief which the President had determined was appropriate, nor does it state the reason for the difference in the action regarding import relief, the President was taking as that recommended by the ITC. I am advised by counsel that the determination (Exhibit "E") is fatally defective and does not comply with requirements of the Trade Act.

On the same day, April 1, 1977, a document identical in substance was transmitted to Congress. The document transmitted to Congress does not report to Congress the reasons for the difference in the action being taken by the President as opposed to the action recommended by the ITC, nor does it inform the Congress as to the President's determination of what method and amount of import relief he will provide. I am advised by counsel,

that the document transmitted to Congress is insufficient and does not comply with the Trade Act.

In or about April or May, 1977, defendant Strauss and defendant Lande entered into negotiations with representatives of the governments of the Republics of China and Korea. These negotiations continued for some time. The Republic of China and the Republic of Korea by and large, manufacture footwear which is sold at prices in the middle to low end of the price market. This is footwear which is moderately priced footwear and is sold at "popular" prices to consumers in the lower-economic levels.

For many years, because of material and labor costs in this country, a vacuum existed in this market. No companies in this country produced athletic footwear utilizing such special materials as leather, suede and vinyl which could be afforded by the general public and in particular the general middle-range consumer. Prior to the importing of athletic footwear utilizing leather or vinyl, there was no domestic market for these types of athletic shoes in the "popular" price range. Any athletic shoes made from these materials were sold only in the high-price range, catering to the professional athlete and the wealthy. With the imposition of the trade quotas by the President, athletic footwear utilizing leather, suede or vinyl will again become prohibitively expensive and only within reach of the wealthy.

Defendants Strauss and/or Lande concluded an understanding with the Republics of China and Korea as to the export of footwear from their countries. This understanding is embodied in notes passed between the respective representatives and will be formalized in an agreement between the respective governments. I understand that the President has announced his intention to enter into the formal agreements prior to June 15, 1977 and it is likely that the agreements may be entered into this week.

The notes and therefore the agreements provide for the imposition of absolute quotas from the Republics of China and Korea respecting non-rubber footwear in two categories; one leather and vinyl footwear which would principally include athletic footwear. The effect of the quotas to be imposed by the marketing agreements with the Republics of China and Korea, will be to reduce by one-third all footwear presently imported from the Republic of China and to reduce by one-half all footwear presently imported from the Republic of Korea. Approximately 80 million pairs of non-rubber footwear will therefore be prevented from reaching the American consumer and particularly the American consumer who can least afford it.

The course of action taken by the President is directly contrary to that recommended by the ITC and defies the purpose and intent of the Trade Act as indicated by the considerations set forth in the Trade Act which the President must take into account in arriving at the course of action he determines should be taken. The ITC specifically recommended against absolute quotas. The ITC's report states as follows (at p. 15 of its report):

"In making our determination, we also considered whether either a quota or an increase in the rate of duty on all imports would be the appropriate remedy in the circumstances revealed by the Commission investigation. An absolute quota could eliminate imports as a competitive force above the level of the quota. This would tend to reduce the incentive for the domestic industry to make vigorous efforts to adjust to import competition. Since footwear is not a fungible product, an absolute quota would, among other things, unnecessarily restrict the consumers' freedom of choice and prevent them from buying imported shoes irrespective of price or the availability in the domestic market of the type of shoes desired, once the quota had been filled."

The Council on Wage and Price Stability ("Council"), part of the Executive Office of the President, and created by Congress under the Council on Wage and Price Stability Act of

1974, to monitor the inflationary impact of activities of both the private and public sectors of the economy, opposed the even less restrictive recommendations of the ITC because of the inflationary results which would occur if the ITC'S recommendations had been adopted. According to a study done by the Council in connection with the ITC'S reinvestigation (a copy of the Council's study is annexed here as Exhibit "F"), the ITC'S less drastic proposal would have cost the consumer 2.4 billion dollars. The Council calculated that the cost of creating a job under the lesser remedy proposed by the ITC, would have cost \$114,000.00 for every job created by the measures. The Council summed up its view as follows (at pgs. 9-10):

Finally, we acknowledge that the question of equity--who gains and who loses--is often addressed in such questions of public policy. Although we are convinced that the tariff and quota options discussed in this paper would be inflationary and costly to society, if equity goals were furthered, a case might be made for pursuing such proposals provided that there did not exist any other less costly way to attain the same social objective(s). Trade adjustment assistance can be given selectively to firms and their employees according to need. However, the general revenue transfer to the shoe industry that would accompany a tariff or quota would reward the firms and their employees who do not need assistance, as well as those that do.

Significantly, the ITC did not find that its recommendations would increase competition and one Commissioner specifically noted that as to the imports coming in from the Republics of China and Korea, "Only a small percentage of United States shoe firms manufacture shoes of comparable quality for the prices at which the Taiwanese and Korean shoes sell. Thus, even with the imposition of the higher rate of duty contemplated by the

majority members, it is very doubtful that sufficient quantity of comparably priced shoes could be produced domestically.. " (at p. 45 of the report). I know, having been in this business for many years, that all that the absolute quotas would do is cause a substantial increase in the price of footwear to the consumer who can least afford it. I estimate that the price of footwear will be increased by \$3.00 to \$4.00 and families with several children can ill-afford this kind of increase in cost to the consumer.

In a recent article published by the Journal of Commerce, on May 25, 1977, a study done by Brimmer & Company for the Volume Footwear Retailers of America was quoted to have found that the absolute quotas to be imposed by the agreements with the Republics of China and Korea will cost the consumer twice as much as the recommendations of the ITC. The study predicts that the average price of shoes will raise about 10% in the first year. The study prediction that the low-economic-consumer will be faced with the reduced range of choice of shoes and that the domestic industry is unable, in the immediate future, to produce comparable shoes. The study further found that the ultimate cost of the President's proposal to the consumer will be more than one billion dollars for the first year alone (a copy of the article which appeared in the Journal of Commerce is annexed hereto as Exhibit "G").

The ITC'S report to the President, the study performed by the Council on Wage and Price Stability and the study performed by Brimmer & Company establish that absolute import quotas to be imposed under the agreements and understandings with the Republics of China and Korea will substantially increase the cost of athletic footwear to the American consumer, have a significant inflationary

effect on the American economy and will not add competition to the domestic market and footwear industry but in fact decrease competition in this country, even among domestic footwear producers. Furthermore, the American consumer will be deprived of athletic footwear at "popular" prices made with leather, suede or vinyl. From the above the inescapable conclusion is that the President failed to take into account and consider the effect on the American consumer and competition in the domestic footwear industry through the imposition of absolute import quotas. The President is specifically directed by the Trade Act to take into account and consider these important factors in making any determination as to appropriate import relief.

Indeed, the President's absolute import quotas are contrary to the recommendations of the ITC'S report and that of the President's Council on Wage and Price Stability.

The import quotas being imposed by the President upon the Republics of China and Korea also violate the Trade Act because they are greater than the maximum relief permissible under the Trade Act. The President's import quotas will reduce by one-third all footwear presently imported from the Republic of China and reduce by one-half all footwear presently imported from the Republic of Korea. The President's import quotas will cause the level of imports from the Republics of China and Korea to go back to the levels they were at approximately two to two and one-half years ago. The President is limited under the Trade Act to impose quotas reducing imports to the most recent representative period as to quantity and value. The President's import quotas would lower imports from the Republics of China and Korea to a level which is less than the most recent representative period. The fact that based on last years import levels, the President's import quotas will prevent some 80 million pairs of footwear from being imported this year, is indicative of failure

to comply with the Trade Act.

The recommendation of the ITC'S report called for a uniform tariff quota system upon all countries importing shoes in footwear into this country. The President has chosen to discriminate as to footwear being imported from just two countries, the Republics of China and Korea. The Presidents import quotas will not affect all other countries which import footwear into the United States. Thus, importers, distributors and retail stores selling athletic footwear of the type produced in the Republics of China and Korea are being caused irreparable injury while other importers, distributors and retail stores importing shoes from Western and Eastern Europe and South America will be able to continue to import athletic footwear, which is in competition with the domestic industry, without limitation. Thus, the import quotas unfairly discriminate against the plaintiffs.

Irreparable Harm

Between 75% to 85% of the footwear which Blazer sells and distributes consists of athletic and other casual footwear, the upper portions of which are made of either leather, vinyl or sued material (i.e., non-canvass athletic footwear). This footwear is directly affected, and constitutes a significant portion of the total footwear affected by the proposed import quota. Virtually all of the footwear sold by Blazer is produced in either the Republics of China or Korea. Our business consists entirely of sales to independent dealers and department stores throughout the United States. Most of our customers, numbering in excess of 800, are small retail stores. The footwear which I am referring to here may be described popularly as basketball, tennis and jogger-type shoes.

Within the period of approximately the last two years, there has been a sharp increase in United States consumer demand for these non-canvass athletic shoes. I estimate that more than 85% to 90% of this demand has been met by this type of footwear produced in the Republics of China and Korea. Indeed, the demand itself has been fostered and cultivated by the availability of large quantities of footwear from these countries, which is both of high quality and moderately priced, that is, generally within the range of \$10 to \$25. The other sources of this type of footwear are Europe, including Western Europe, manufacturing the high-priced professional or performance footwear generally known as bearing the labels "Adidas" and "Puma" and domestically produced footwear. Domestic production of this non-canvass footwear has not been of a quality which matches that produced in the Republics of China and Korea, nor is it produced in any quantity which can even approach meeting the United States demand. The European performance footwear is manufactured at prices significantly in excess of the moderate or popular-priced footwear imported from the countries which are the target of the proposed quotas. Accordingly, there is no other available source which can realistically be looked to, to supply the already large and continually increasing demand for this moderately priced, non-canvass athletic shoe.

This category of shoe, sold by Blazer at wholesale, retails to the consumer presently at an average price of about \$17 per pair. It is a first-quality, yet moderately priced item, known generally as either, tennis, jogger or basketball shoes. The current large and increasing demand is due to the expanded use of this type of footwear in the United States for virtually all purposes - athletic, leisure, business, street, school, etc.

The imposition of the proposed quotas on imports of this footwear from the Republics of China and Korea will drastically curtail its available supply. There is no other presently available supply of comparable footwear in the domestic market or elsewhere. Moreover, I cannot foresee that domestic production will sufficiently increase and improve in quality so as to sufficiently fill the demand gap. The resultant lack of supply to meet demand can only be long-term, if not permanent. I entirely expect a marked increase in consumer prices, not only to present levels of retail prices of domestically produced non-canvas athletic shoes and of performance shoes of the "Adidas" type, but at even higher retail costs, since a reduction in the supply of moderate priced non-canvas athletic shoes will create an upward force even in the prices of such shoes sold at higher retail levels.

There will also result, I foresee, a virtual absolute termination of production by foreign manufacturers of the shoes which are currently sold at the lower end of the moderately priced scale, since these manufacturers will wish to maximize their sales dollar volume in the light of the curtailment in numbers of pairs available for export due to the quotas. Children's footwear and other lower-priced footwear within this category will no longer be available.

Most fundamentally, the result can only be a marked increase in consumer prices of this footwear, an inability to even approach meeting demand, a sharp loss of business, with an attendant failure of a number of importers, wholesalers and retailers engaged presently in selling and distributing this footwear.

Specifically, with respect to Blazer, there will be a major erosion in its supply and ability to sell this footwear, with an attendant large loss of business. Since our business is geared to and entirely dependent upon the sale and distribution of the category of footwear that I have described here, and since the realities of the market will not permit a comparable alternative source of supply, the effect must be the irreparable harm and eventual destruction of Blazer's business.

I also point out that apart from the non-canvas athletic footwear which I have described here, the other major category of footwear encompassed by the proposed import quota is that of women's vinyl dress and leisure footwear. While Blazer does not sell this footwear, I am aware of the market considerations respecting it and its importation. Most of it is imported from the Republic of China and sells in the United States at retail prices ranging between \$3 and \$10 per pair. Comparable footwear manufactured domestically sells at retail at two to three times that price. Here too, the quota will result in an increase in the consumer price of women's vinyl footwear to maintain the present retail levels of such footwear produced domestically.

WHEREFORE, it is respectfully prayed that the within application be in all respects granted.

Sworn to before me this

31st day of May, 1977

Jonathan S. Gaylin

JONATHAN S. GAYLIN
Notary Public, State of New York
No. 31-130590
Qualified in New York County
Commission Expires March 30, 1979

Donald Kalfin
DONALD KALFIN

EXHIBIT A ANNEXED TO AFFIDAVIT OF DONALD KALFIN

Hon. Will E. Leonard
Chairman
U. S. International Trade Commission
Washington, D. C. 20436

Respectfully request you thoroughly investigate proceedings re Senate nonrubber footwear resolution before a decision on good cause. Action by four or five Senators does not reflect Senate position as evidenced by Singleton proposal which had nominal support of only twenty-four other Senators. In the interest of equity, hope you will permit opponents of shoe c to meet with you prior to decision on good cause. Thank you.

REA

EXHIBIT B ANNEXED TO AFFIDAVIT OF DONALD KALFIN

14756

NOTICES

PRIVACY ACT OF 1974

Corrections to Systems of Records

On August 21, 1976, there was published in the FEDERAL REGISTER (41 FR 35787 through 35789) a notice to clarify the routine uses of the systems of records identified as GSA/ADTS 4, Emergency Notification Files; and GSA/ADTS 8, Key Personnel and Essential Residence Telephone Directory.

The public was given the opportunity to submit, not later than September 23, 1976, written comments concerning the additional routine uses. No comments were received and the proposed additional routine uses are hereby adopted.

Dated at Washington, D.C. on September 30, 1976.

C. C. GARDNER,
Director of Administration

[FR Doc 76-29882 Filed 10-3-76; 8:45 am]

INTERNATIONAL TRADE
COMMISSION

[ITA-231-18]

FOOTWEAR

Investigation and Hearing

Investigation instituted. Following receipt on September 28, 1976, of a resolution of the Committee on Finance of the Senate for a new investigation pursuant to section 201(b)(1) of the Trade Act of 1974 (Trade Act), the United States International Trade Commission on October 5, 1976, having determined good cause to exist for a reinvestigation within 1 year pursuant to section 201(e) of the Trade Act, instituted such an investigation to determine whether footwear, provided for in items 700.05 through 700.85, inclusive (except items 700.51, 700.52, 700.53, and 700.60), of the Tariff Schedules of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Investigation to be expedited. It is the intention of the Commission to expedite the investigation in this matter and to submit its report to the President as soon as possible.

Public hearing ordered. A public hearing in connection with this investigation will be held in Washington, D.C., at 10 a.m., e.s.t., on Tuesday, December 7, 1976, in the Hearing Room, United States International Trade Commission Building, 701 E Street NW. Requests for appearances at the hearing should be received in writing by the Secretary of the Commission at his office in Washington, D.C., not later than noon, Thursday, December 2, 1976.

By order of the Commission.

Issued: October 5, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc. 76-29733 Filed 10-8-76; 8:45 am]

MUSHROOMS

Investigation and Hearing

Investigation instituted. Following receipt on September 20, 1976, of a request by the Special Representative for Trade Negotiations for a new investigation pursuant to section 201(b)(1) of the Trade Act of 1974 (Trade Act), the United States International Trade Commission on October 5, 1976, having determined good cause to exist for a reinvestigation within 1 year pursuant to section 201(e) of the Trade Act, instituted such an investigation to determine whether mushrooms, prepared or preserved, except fresh or dried, provided for in item 144.20 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Investigation to be expedited. The Special Representative also requested that the Commission issue its report in connection with this investigation on a highly expedited basis. The Commission will expedite its investigation and issue its report as soon as possible.

Public hearing ordered. A public hearing in connection with this investigation will be held in Washington, D.C., at 10 a.m., e.s.t., on Thursday, November 11, 1976, in the Hearing Room, United States International Trade Commission Building, 701 E Street NW. Requests for appearances at the hearing should be received in writing by the Secretary of the Commission at his office in Washington, D.C., not later than noon, Friday, November 5, 1976.

Issued: October 5, 1976.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 76-29734 Filed 10-8-76; 8:45 am]

[322-80]

PROBABLE ECONOMIC EFFECT OF THE
PROVISIONS OF H.R. 14600 AND THE
NEED TO PROTECT A DOMESTIC INDUSTRY

Investigation and Public Hearing

In response to a request dated September 14, 1976, by the Committee on Ways and Means of the House of Representatives, the United States International Trade Commission instituted an investigation on October 1, 1976 under section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), to determine the probable economic effect of the provisions of H.R. 14600 (a bill to amend the Tariff Schedules of the United States (19 U.S.C. 1202) with respect to the tariff treatment accorded to technologically advanced, high-precision watches and watch movements) and the need to protect a domestic industry, as more fully set forth in the following resolution of the Committee:

Resolved: That the United States International Trade Commission shall make an investigation, pursuant to section 332(g) of the Tariff Act of 1930, to determine the probable economic effect of the provisions of H.R. 14600 and the need to protect a domestic industry. In conducting such an investigation, the Commission should report upon:

(1) The effect to which U.S. consumption of watch movements and having a balance wheel and hair spring (so-called nonconventional watches) or parts, components, or assemblies thereof, is being supplied by domestic production and by imports (including the extent to which parts or components originating in the United States are being incorporated in imports);

(2) The effects, if any, on U.S. imports and trade of an increase in U.S. duties on nonconventional watches and components;

(3) The effects on U.S. employment of companies making both conventional and nonconventional watches and components, and parts thereof of current and anticipated levels of importation of nonconventional watches; and

(4) The effects, if any, on competition and market shares in the United States of an increase in nonconventional watch duties and the effects of such an increase on consumer prices.

In conducting this investigation, the Commission shall solicit and consider the views of interested parties and, if appropriate, hold public hearings.

The Commission shall submit a written report on this investigation to the Committee on Ways and Means at the earliest practicable date, but not later than March 31, 1977.

A public hearing in connection with the investigation will be held in the Commission's Hearing Room, United States International Trade Commission Building, 701 E Street, NW, Washington, D.C., beginning at 10 a.m., e.s.t., on January 4, 1977. All interested parties will be given an opportunity to be present to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Commission at his office in Washington, D.C., not later than Thursday, December 30, 1976.

Issued: October 5, 1976.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 76-29735 Filed 10-8-76; 8:45 am]

JOINT BOARD FOR THE
ENROLLMENT OF ACTUARIESADVISORY COMMITTEE ON JOINT BOARD
ACTUARIAL EXAMINATIONS

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-483) and Office of Management and Budget (OMB) Circular No. A-63, Revised, it is hereby determined that the establishment of an Advisory Committee on Joint Board Actuarial Examinations is in the public interest in connection with the performance of duties imposed on the Joint Board by the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) (ERISA). This determination follows consultation with the Office of Management and Budget pursuant to section 9(a)(2) of the Federal Advisory Com-

EXHIBIT C ANNEXED TO AFFIDAVIT OF DONALD KALFIN

November 15, 1976

Honorable Will E. Leonard, Jr.
Chairman
United States International Trade Commission
701 E Street, N.W.
Washington, D.C. 20436

Re: Investigation TA-201-18
Petition for Hearing on Good Cause

Dear Mr. Chairman:

The American Retail Federation petitions the United States International Trade Commission to hold hearings on the question of whether good cause exists for reinvestigation within one year, pursuant to Section 201(e) of the Trade Act of 1974, of footwear provided for in items 700.05 - 700.85, inclusive (except items 700.51, 700.52, 700.53 and 700.60), of the Tariff Schedules of the United States. The Notice of Investigation and Hearings of the USITC, dated October 5, 1976, states only that the Commission has determined good cause to exist. This fails to inform any entity, trade association, firm, union or representatives of workers or industry of the nature and scope of the new investigation.

Part 206 of the Rules of the United States International Trade Commission, published in the Federal Register on August 13, 1975, sets forth an outline of the vital information necessary in the formulation of a petition, including, among other things, a description of the product, the names of represented producers and unrepresented producers, import data, domestic production data and data specifically showing injury and cause of injury. In addition, the Rules call for statement of the import relief sought. None of this vital information is present in Investigation TA-201-18, consequently parties whose interests make it vital that they must respond in this proceedings are unable to prepare an adequate response and are deprived of the administrative due process which the Commission's Rules seek to protect. The members of the American Retail Federation could very possibly be adversely affected by the Commission's rulings and decision in this proceedings.

If Investigation TA-201-18 is a continuation of TA-201-7, then a new hearing on good cause is even more vital in order to limit and define the scope of the reinvestigation and make known to the participants the new and compelling circumstances which caused the Commission to reopen the investigation,

particularly since that investigation has recommenced only six months after the President instituted adjustment assistance as a remedy for the injury found by the USITC in Investigation TA-201-7.

The American Retail Federation therefore requests the USITC to conduct a public hearing into the question of good cause, as set out above, and to establish and make known to the public the critical information outlined in the Commission's Rules before proceeding further with Investigation TA-201-18.

Cordially,

William Kay Daines

WKD:jsp

EXHIBIT D ANNEXED TO AFFIDAVIT OF DONALD KALFIN

November 30, 1976

To parties concerned with Investigation No. AA1921-18, Concerning Footwear

On November 23 the U.S. International Trade Commission authorized me to distribute to the parties concerned with the above subject investigation certain information concerning imports, domestic production, employment, and related matters that are part of the investigation. All of these materials presented are available from other public sources. The information will be included as Exhibit I of the public hearing and additional copies will be available on the first day of the public hearing December 7, 1976.

It is the hope of the Commission that the availability of this information will expedite testimony by all parties to the investigation.

Sincerely,

Charles Ervin
Deputy Director
Office of Investigation

Source: U.S. production, imports for consumption, apparent consumption, average number of employees, total and production workers, and unemployment rate, January-September 1975 and January-September 1976.

Production			Imports			Apparent consumption			Ratio of imports to consumption		All employees			Production workers			Unemployment rate 1/	
1975	1976	Increase or decrease (%)	1975	1976	Increase	1975	1976	Increase	1975	1976	1975	1976	Increase	1975	1976	Increase	1975	1976
1,000 Pairs	1,000 Pairs	Percent	1,000 Pairs	1,000 Pairs	Percent	1,000 Pairs	1,000 Pairs	Percent	Percent	Percent	Thous- sands	Thous- sands	Percent	Thous- sands	Thous- sands	Percent	Percent	Percent
32,776	32,970	19	27,511	32,200	17	60,187	71,170	18	46	45	166.2	171.1	3.0	143.6	149.8	4.3	11.0	10.7
31,177	37,981	22	24,483	29,238	19	55,660	67,219	21	44	44	161.2	172.6	7.1	138.4	151.1	9.2	17.7	16.2
30,176	44,361	45	27,856	42,300	52	54,432	86,661	46	47	49	154.7	172.9	11.0	133.6	151.4	13.3	15.8	7.4
32,760	41,575	27	23,911	32,362	35	58,679	73,937	30	42	46	136.7	174.7	11.5	135.0	152.9	13.3	15.0	7.1
32,684	40,778	25	19,036	30,123	58	51,720	70,871	37	37	43	159.5	176.4	10.8	138.3	155.3	12.3	13.4	8.5
34,783	34,114	15	20,675	30,858	49	54,758	69,976	28	38	44	164.7	177.4	7.7	143.5	155.9	8.6	13.5	12.5
42,142	31,034	-15	25,293	30,596	21	57,445	41,630	7	54	55	159.1	165.5	4.7	138.2	146.2	5.8	11.9	12.1
34,170	34,344	1	22,740	34,540	52	58,914	71,101	21	19	49	144.5	171.1	3.8	143.6	149.6	4.2	13.9	9.5
37,444	37,251	-1	22,310	27,563	24	60,003	65,025	8	37	42	163.1	166.7	2.2	142.2	143.1	1.0	10.9	12.2
33,111	34,744	16	213,424	253,764	20	514,815	627,823	24	42	45	-	-	-	-	-	-	-	-
37,147	38,664	16	24,758	32,146	30	57,701	70,947	24	42	46	161.2	172.2	6.8	139.4	150.6	7.9	13.7	10.8

Leather and leather products industry (SIC 311). Approximately two-thirds of the workers in the leather and leather products industry are nonrubber footwear workers.

Compiled from official statistics of the U.S. Department of Commerce and the U.S. Department of Labor.

1. Imports of so-called disposable paper slippers have been excluded from this table. Such imports amounted to an estimated 25 million pairs in the first 9 months of 1975 and, according to official statistics, 26 million pairs in the comparable period of 1976. Data on imports of slippers have also been excluded from this table. Such imports amounted to 17 million pairs in the first 9 months of 1975 and 26 million pairs in the comparable period of 1976.

Table 2---Nonrubber footwear: U.S. production, imports for consumption, exports of domestic merchandise, apparent consumption, average number of employees, total and production workers, and unemployment rate, 1968-75

Year	Production	Imports	Exports	Apparent consumption	Ratio of imports to consumption	Average number of employees		Unemployment rate 1/
	Million pairs	Million pairs	Million pairs	Million pairs	Percent	All persons Thousands	Production workers Thousands	Percent
1968-----	642.4	181.5	2.4	821.5	22	233.4	204.1	4.
1969-----	577.0	202.2	2.3	776.9	26	226.3	197.1	4.
1970-----	562.3	241.7	2.2	801.8	30	213.6	185.5	6.
1971-----	535.8	268.6	2.1	802.3	33	200.6	173.6	8.
1972-----	526.7	296.7	2.3	821.1	36	198.1	172.2	7.
1973-----	490.0	307.5	3.6	793.9	39	189.1	164.3	6.
1974-----	453.0	266.4	4.0	715.4	37	178.1	154.3	7.
1975-----	413.1	287.8	4.6	696.3	41	163.0	141.4	13.

1/ For the leather and leather products industry (SIC 31). Approximately two-thirds of the workers in the leather and leather products industry are nonrubber footwear workers.

Source: Compiled from official statistics of the U.S. Department of Commerce and U.S. Department of Labor.

Note.--Data on imports of so-called disposable paper slippers from Mexico, which were entered in substantial quantities beginning in 1973, have been excluded from this table. Such imports amounted to an estimated 32 million pairs in 1975. Data on such imports have also been excluded from this table; such imports amounted to 20 million pairs in 1975.

EXHIBIT E ANNEXED TO AFFIDAVIT OF DONALD KALFIM

presidential documents

Title 3—The President

Memorandum of April 1, 1977

Decision on Non-Rubber Footwear Under Section 202(b) of the Trade Act of 1974

Memorandum for the Special Representative for Trade Negotiations

THE WHITE HOUSE,
Washington, April 1, 1977.

Pursuant to section 202(b) of the Trade Act of 1974 (PL 93-618, 88 Stat. 1978), I have determined the action I will take with respect to the report of the U.S. International Trade Commission (USITC) dated February 8, 1977, concerning the results of its investigation on non-rubber footwear. This investigation was undertaken at the request of the Senate Finance Committee.

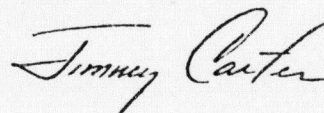
I have determined that the import relief remedy recommended by the USITC does not provide a balance among the various interests involved. Therefore, I am directing you to negotiate and conclude the necessary agreements with the appropriate foreign exporting countries to moderate the problems caused to our domestic footwear manufacturers, workers, and communities by rapid shifts in foreign exports of non-rubber footwear to the United States. This should be a short term program sufficient to allow the domestic industry to become more competitive.

In seeking these agreements you should remain mindful of the interests of American consumers and the difficult economic problems faced by a number of our trading partners, in particular the developing country suppliers with serious balance of payments deficits.

I am also asking the Secretaries of Commerce and Labor to work closely with you to ensure effective use of the resources available under existing law for the benefit of the shoe industry and the communities in which shoe plants are located.

In addition, I am ordering a full review of the Government's trade adjustment assistance program and will recommend to the Congress within the next 90 days any legislation which may be warranted. This will coincide with your negotiating effort, and in accordance with the law, I will present a program of relief to the Congress no later than 90 days from today.

This determination is to be published in the FEDERAL REGISTER.



[F.R. Doc. 77-10370 Filed 4-5-77; 10:46 am]

EDITORIAL NOTE: The President's statement of Apr. 1, 1977, and his memorandum for the heads of certain departments and agencies, dated Apr. 1, 1977, on import relief for the non-rubber footwear industry, are printed in the Weekly Compilation of Presidential Documents (vol. 19, pp. 478 and 479).

EXHIBIT F ANNEXED TO AFFIDAVIT OF DONALD KALFIN

BEFORE THE UNITED STATES
INTERNATIONAL TRADE COMMISSION

DOCKET NO. TA-201-18
PETITION OF THE AMERICAN FOOTWEAR
INDUSTRIES ASSOCIATION, ET AL.

COMMENTS OF THE
COUNCIL ON WAGE AND PRICE STABILITY*

*The Council is authorized by Section 3(a)(8) of the Council on Wage and Price Stability Act to participate in Federal agency proceedings to present its views on the inflationary impact that might result from those proceedings. The Council has delegated this authority to the Director of the Council (40 FR 52892). Members of the Council who are also Members of the Trade Policy Committee have not participated in the preparation of this testimony.

CWPS-217

Introduction

The Council on Wage and Price Stability (the "Council") hereby submits its comments on the reopening of the investigation under section 201(b)(1) of the Trade Act of 1974 (88 Stat. 1978) relating to footwear. The footwear case was originally instigated by a petition of the American Footwear Industries Association and other parties for import relief under Title II of the Trade Act of 1974, 19 U.S.C. Section 2101 et seq. The specific relief requested by the petition was quantitative restrictions on nonrubber footwear--on a product-by-product, country-by-country, and pairage basis--that would limit the importation of foreign footwear to levels that prevailed at the end of the 1968 Kennedy round of tariff reductions.

The International Trade Commission (the "Commission") held hearings from December 2nd to December 8th, 1975, at which the Council presented testimony. ^{1/} On February 20, 1976, the six commissioners presented their recommendations to the President. The commissioners unanimously determined that "footwear...is being imported in such increased quantities as to be a substantial cause of serious injury." ^{2/} However, the commissioners split their recommendations as to the appropriate

^{1/} See "Comments of the Council on Wage and Price Stability Before the United States International Trade Commission," CWPS-113 (December 8, 1975).

^{2/} See United States International Trade Commission, Footwear: Report to the President on Investigation No. TA-201-7 (February, 1976), p. 3.

remedy for the injury. Three commissioners recommended tariffs ranging from 25 percent to 35 percent ad valorem for the first year and declining gradually for the next four years; two commissioners recommended tariffs of 40 percent on footwear imported in excess of the import levels for 1974 by country; and one commissioner recommended that trade adjustment assistance be granted under Chapters 2, 3, and 4 of the Trade Act of 1974. 1/

On April 16, President Ford determined that it was in the national interest to adopt the trade adjustment recommendation. 2/ On September 22, 1976, however, the Senate Finance Committee adopted a resolution calling on the Commission to open the investigation of the appropriate remedy, which they have done as Investigation No. TA-201-18. 3/ The Council accepts the unanimous finding of the Commission with regard to its finding of injury and in the following testimony addresses the issue of the appropriate remedy.

The Council's Interest

The Council was created by the Council on Wage and Price Stability Act of 1974. 4/ The Council's purpose under the Act is, generally summarized, to monitor the inflationary impact of activities

1/ See USITC Footwear, pp. 4-6.

2/ Memorandum for the Special Representative for Trade Negotiations, 41 FR 16545.

3/ Resolution of the Committee on Finance, U. S. Senate, September 22, 1976.

4/ Public Law 93-387, as amended by Public Law 94-78, 12 U.S.C. Section 1904 note.

in both the private and public sectors of the economy. With respect to the public sector, section 3(a) of the Act expressly authorizes the Council to:

(7) review and appraise the various programs, policies, and activities of the departments and agencies of the United States for the purpose of determining the extent to which those programs and activities are contributing to inflation; and

(8) intervene and otherwise participate on its own behalf in rulemaking, ratemaking, licensing and other proceedings before any of the departments and agencies of the United States, in order to present its views as to the inflationary impact that might result from the possible outcomes of such proceedings.

It should be noted that the Council does not automatically oppose all rulemaking or ratemaking proceedings that increase costs to the public or add to the Consumer Price Index (CPI). Instead, we view as inflationary only those regulatory actions which generate costs to society exceeding benefits. On the other hand, if a regulatory proposal would generate benefits in excess of costs, approval would constitute an anti inflationary action.

The Impact of the Remedy on
Consumer Prices and Public Welfare

One source of the Council's interest in this investigation is its concern for the impact of the suggested tariff and quota remedies on the prices and sales of nonrubber footwear and therefore on the welfare of footwear consumers. The Council staff has reviewed the

record of the Footwear Investigation No. TA-201-7, as well as additional and more recent data, and has concluded that the tariff, tariff-quota, and quota remedies suggested in this investigation would have significant inflationary impact on the prices of footwear. Moreover, we have concluded that the costs associated with the proposed remedies exceed the benefits and therefore their adoption would result in a real welfare loss to the U. S. public. ^{1/}

The Council staff calculated the possible inflationary effects of the proposed remedies in two ways. First, the approximate loss to consumers was estimated by using the conventional static model of the welfare effects of tariffs found in any international trade textbook, ^{2/} combined with estimated 1976 production, imports, value of shipments and apparent consumption data and previously estimated excess import demand, domestic demand, and foreign supply elasticities. ^{3/} Such an approach

^{1/} The Council supports the legal arguments made in its previous comments as to the inappropriateness of these remedies (see "Council," *op. cit.*), but confines its comments here to the possible inflationary impact of the proposed remedies.

^{2/} For example, see Edward Leamer and Robert Stern, *Quantitative International Economics* (Boston: Allyn and Bacon, Inc., 1970), pp. 184-199.

^{3/} The model is more fully explained in the appendix. The 1976 estimates for production, imports, and consumption of shoes are 477 million, 390 million, and 867 million pairs, respectively. They were calculated by extrapolating the nine-month 1976 estimates to 12 months by using 1975 data. The data were supplied by the Commission in the November 30, 1976, memo to the parties concerned with this investigation. (See memorandum "to parties concerned with Investigation No. AA1921-18, concerning Footwear," from Charles Ervin, Deputy Director, Office of Investigation, International Trade Commission, dated November 30, 1976.) The value of shipments for 1976 was estimated at \$7.00 per pair, a conservative four percent extrapolation to account for inflation of the 1974 \$6.70 value found in *U. S. Industrial Output for 1975* (Washington: U. S. Department of Commerce, 1976), p. 237.

was followed last year by the Council and by Dr. C. Fred Bergsten of the Brookings Institution, who testified on behalf of Consumers Union. ^{1/} In the second approach, we adopted the cost-benefit technique to calculate the "dead weight social loss" to society of the imposition of the proposed remedies and the net benefits of the jobs created by increased domestic production and decreased domestic consumption. Both approaches led us to conclude that the tariff and quota approaches should be rejected by the Commission in favor of the trade adjustment assistance remedy originally implemented by the President.

Impact on Consumer Prices

The major unknowns of our model are the domestic supply and demand parameters. However, reliable estimates are available. We will discuss a range of estimates that likely encompass the real world. Our example is based on the excess import demand elasticity of -1.33 for nonrubber footwear estimated by Dr. Wayne M. Simon of the Commission's Office of Economic Research. ^{2/} In addition, we used the domestic demand elasticity for shoes of -0.24 estimated by Professors Houthakker and Taylor.

^{1/} See "Council," op. cit., and "Statement of Consumers Union of the United States on the Petition of the American Footwear Industries" (December 4, 1975).

^{2/} See "Import Elasticities of Demand for the Nonrubber Footwear Industry," (Washington: Office of Economic Research, USITC, December, 1976).

^{3/} See H. S. Houthakker and L. D. Taylor, Consumer Demand in the United States (2nd edition; Cambridge: Harvard University Press, 1970), p. 67. This estimate was also used by Bergsten in his testimony for Consumers Union, op. cit.

The figure in the appendix shows that our estimated domestic supply elasticity of 0.67 ^{1/} implies that a 20 percent ad valorem tariff would increase production by 13 percent, or by 64 million pairs annually, bringing total domestic production to 541 million. ^{2/} Consumption declines to 325 million pairs annually, and imports contract from 390 million pairs annually to 284 million pairs. The cost of these changes to consumers, using the \$1.40 increase in wholesale prices and thus the \$2.80 increase in retail prices implied by the 100 percent mark-up "rule" for wholesale prices found by the Commission, ^{3/} is about \$2.4 billion ^{4/} or about 0.3 percent in the CPI. ^{5/} However, only about \$1.85 billion of

^{1/} Supply elasticity, E^S , can be calculated using the formula: $\frac{1}{N} = (P \cdot E^S)/M + (C \cdot E^D)/M$, where E^S and E^D are the (positive) elasticities of domestic supply and demand, N is the excess import demand elasticity, and P , C , M are domestic production, consumption, and imports. (See Leamer and Stern, *ibid.*, p. 195).

^{2/} Note, however, that this produces a 90 percent underutilization rate, given the 602 pairage estimate for 1975 plant capacity of the American Footwear Industries Association. (See Testimony of Stanley Nehmer Before the ITC in the Escape Clause Investigation on Nonrubber Footwear; December 2, 1975; Table 16.) This indicates that the short-run supply elasticity estimate of 0.67 is reasonable. The last time 541 million pairs were produced domestically was in 1971.

^{3/} We pass no judgment on the reliability of this "rule," and are inclined to think the mark-up would be less than 100 percent. If it were less, our quantitative estimate of the welfare loss would be lower, but there would be a loss just the same.

^{4/} See USITC, *Footwear*, p. A. 117. A 50-percent-mark-up rule would cost consumers \$1.8 billion.

^{5/} Since nonrubber footwear makes up about 1.5 percent of the goods and services in the CPI.

the \$2.4 billion is received by the shoe industry. Of the remaining \$550 million, about \$400 million is collected as tariff revenue by the government, while \$150 million is the "dead weight social loss to society." ^{1/}

Job Creation Benefits

Offsetting these costs are the gains to society from employing previously unemployable resources. In particular, it has been argued that in the short run the opportunity costs of employing previously laid-off shoe workers is near zero because of the location, age, and lack of training of the average production worker in the shoe industry. Thus, at the extreme, we will ignore opportunity costs during an adjustment period and count the contribution of shoe workers as windfall gains to society. Assuming a fixed output/labor ratio of about 3,000 pairs per production worker per year, ^{2/} the increase in domestic production of 64 million pairs would require about 21,000 additional workers to the approximately 151,000 employed during 1976, bringing the total production labor force to almost 172 thousand, the highest employment level since 1972.

^{1/} See Leamer and Stern, *ibid.*, p. 191. These calculations are shown in the appendix.

^{2/} This ratio has been approximately constant from 1968 to the present. [See USITC memo (November 30, 1976), *op. cit.*, Table 2.]

First note that the unemployment rate of the leather and leather products industry of 13 percent in 1975 ^{1/} implies that only 22,400 shoe workers were seeking jobs. Thus, many of the 21,000 new workers might come directly from the ranks of the unemployed. If we count all of the 21,000 jobs having zero opportunity costs, ^{2/} the cost to shoe consumers of creating 21,000 jobs is \$2.4 billion divided by 21,000, or \$114,000 per job per year. Ignoring the transfer costs to shoe consumers and just counting the social cost not recovered by society (the dead weight social cost of \$150 million), the cost to society is \$7,143 per job created, a figure greater than the \$6,160 per year that the average production worker in the shoe industry earns. ^{3/} Because in a competitive labor market the marginal product of a worker can be approximated to his (or her) wage rate, even with assumptions biased generously in favor of benefits, the costs to society of the tariff exceed the possible benefits to society of job creation.

^{1/} See USITC memo, op. cit.

^{2/} E. J. Mishan points out in Cost-benefit Analysis (2nd edition; London: George, Allan & Unwin, 1975), p. 293, that this line of reasoning requires that expenditures not be reduced anywhere else. Yet, clearly shoe consumers will have less income to spend on other goods and services, and therefore jobs would be decreased in other sectors. Also note that the opportunity cost of giving up leisure is not zero.

^{3/} See Employment and Earnings (U. S. Department of Labor, October, 1975), p. 100.

A more realistic approach to this issue would be to take into account the loss of jobs in shoe retailing. There were 134,000 production workers employed in shoe stores during August, 1976, 1/ and since 51 percent of the sales of shoes by value were made in shoe stores in 1972, 2/ there would appear to be approximately 260,000 production workers selling shoes at the retail level. Given the output/labor ratio implied by total 1976 estimated sales and the 4.8 percent decrease in sales implied by the 42 million pairage shortfall, 12,480 jobs would be lost at the retail level. Thus, the net number of new jobs created would be only about 8,500. This adjustment pushes the net cost to shoe consumers of job creation to over \$282,000 per job per year, and, ignoring transfers, to \$17,647 per job per year in dead weight social loss to society.

Other Considerations

Finally, we acknowledge that the question of equity--who gains and who loses--is often addressed in such questions of public policy. Although we are convinced that the tariff and quota options discussed in this paper would be inflationary and costly to society, if equity goals were furthered, a case might be made for pursuing such proposals provided that there did not exist any other less costly way to attain the same social objective(s). Trade adjustment assistance can be given selectively

1/ Employment and Earnings, ibid., p. 74.

2/ USITC, Footwear, p. C-45.

to firms and their employees according to need. However, the general revenue transfer to the shoe industry that would accompany a tariff or quota would reward the firms and their employees who do not need assistance, as well as those that do.

Another consideration is that much of the income transfers to the shoe industry that would result from a temporary tariff would accrue to the owners of capital and only belatedly filter down to employees. Certainly stockholders have average incomes above shoe consumers. A second consideration is that although shoe workers are among the lowest paid in manufacturing (\$120.41 per week), employees of retail shoe stores are paid even less (\$100.14 per week). ^{1/}

Finally, we have discussed only the static effects of tariffs or quotas. Many economists believe that the dynamic effects on technology and competition are even larger than the static effects. Also, we have not addressed the issue of second-order effects on jobs and welfare. Exports of shoes to the U. S. by Taiwan, Italy, Brazil, Spain, and South Korea enable them to purchase goods and services from the U. S., creating jobs and generating a higher standard of living. Of course, we leave the trade retaliation possibilities and foreign policy implications to individuals with expertise on these issues.

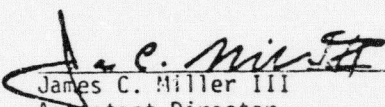
^{1/} See Employment and Earnings, *ibid.*, pp. 100 and 102. The earnings estimates are for production or nonsupervisory workers in August, 1976.

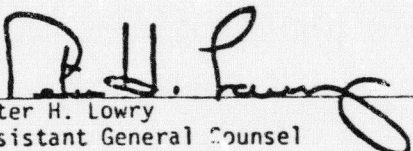
Summary and Conclusion

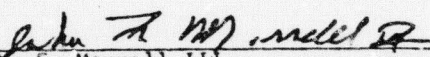
The Council has carefully reviewed the data, assumptions, and implications of the tariff, quota, and combination proposal on non-rubber footwear. We intend to review all the new evidence produced by this hearing and, if necessary, will modify our conclusions in a final brief. At this point, however, our conclusion is that there is no reason to modify the remedy of trade adjustment assistance proposed by the President last April 16th. We urge the Commission to give trade adjustment assistance a chance to work.

Respectfully submitted.


William Lilley III
Acting Director

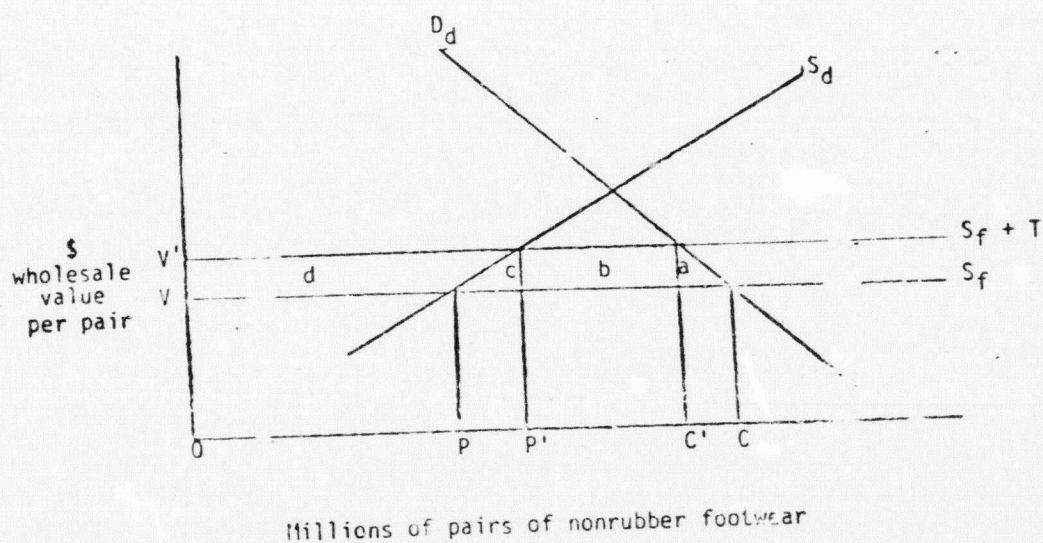

James C. Miller III
Assistant Director
Government Operations and Research


Peter H. Lowry
Assistant General Counsel


John F. Morrall III
Senior Economist
Government Operations and Research

Date: December 7, 1976

Appendix

Static Effects of Imposition of
Proposed Tariff Remedy

Assumptions (for sources, see text):

- * P = 1976 domestic production before tariff = 477 million pairs.
- * C = 1976 apparent consumption before tariff = 867 million pairs.
- * M = 1976 imports before tariff = $C - P$ = 390 million pairs.
- * V = 1976 wholesale shipment value per pair = \$7.00.
- * Mark-up of wholesale prices = 100 percent.
- * N = excess import demand elasticity = -1.33.
- * E_f^S = foreign supply elasticity of S_f -- infinite.
- * T = a 20 percent ad valorem tariff = \$1.40 per pair.
- * E^D = elasticity of domestic demand = -0.24.

Calculations:

- * E_D^S = domestic supply elasticity of $S_d = .67$ since
 $N = (P \cdot E^S)/M + (C \cdot E^D)/M$ (see text).
- * $P' = (P \cdot E_D^S \cdot T) + P = 64 + 477 = 541.$
- * $C' = C - (C \cdot E^D \cdot T) = 867 - 42 = 825.$
- * $M' = C' - P' = 284$
- * Cost to consumers equals $2(a+b+c+d) = \$2.4$ billion.
- * Cost to society equals $2(c+a) = \$150$ million.
- * Tariff revenue equals $b = \$400$ million.

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NEW YORK, WEDNESDAY, MAY 25, 1977

150TH Y





Footwear Import Curbs Seen Costing Consumers \$1 Billion

Average Price of Shoes May Rise by Nearly 10 Per Cent

By RICHARD LAWRENCE
Journal of Commerce Staff
WASHINGTON — U. S. shoe producers are "pleased" with the Carter Administration's negotiation of import curbs on Korean and Taiwan footwear, but a new study, done for retailers, predicts the curbs will cost American consumers \$1 billion within a year.

The average price of shoes, the study says, may rise by almost 10 per cent within 12 months.

Two agreements, to take force June 28 for four years, will pare back U. S. imports from Taiwan and Korea by 22 per cent in the first 12 months, compared with 1976 imports. By the fourth year, deliveries from Korea and Taiwan will still be 15 per cent below the 200 million pairs brought in last year from the two countries.

"It's a good start," said an official of the American Footwear Industries Association (AFIA), the domestic industry's trade group. The two agreements, AFIA Sr. Vice-President Fawn Evanston noted, cover half of all U. S. nonrubber footwear imports. In side-pledges, Korea and Taiwan also promise not to circumvent the agreements by exporting more rubber footwear.

The American industry's favorable reaction to the Korean and Taiwan pacts means Congress will not try to instead impose higher duties on all imported footwear — an option it has under trade law. Higher duties, not quota agreements, had been recommended to President Carter by the International Trade Commission (ITC).

U. S. retailers, however, still hope to get the administration to liberalize the two agreements to let in more shoes from Korea and Taiwan. They are trying to alert the President to an independent finding that the negotiated curbs will cost American consumers twice as much as the higher tariffs urged by the ITC.

The study, done by Brimmer & Co., a Washington consultant, for the Volume Footwear Retailers of America, says that the import curbs will lead both foreign and domestic sup-

plier higher-priced shoes, making cheaper footwear — especially for children — "difficult to obtain."

Besides having to pay higher prices, low-income consumers also will face a "reduced range of choices" of shoes, according to the report. It puts the higher consumer cost at \$1 billion for the first agreement year, exactly double the

\$500 million earlier estimated by the same consultant firm for the ITC's tariff quota proposal.

The Treasury Department, the President's Council of Economic Advisers and the Office of Management and Budget (OMB) reportedly have expressed interest in the report, which

(Continued on Page 23)

Shoe Import Curbs Seen Hiking Prices

(Continued from Page 1)
also has been circulated in Congress.

How much the Taiwan and Korean quotas will help the domestic shoe industry is questioned. "A shoe is a shoe," domestic producers like to say, contending they can fill the coming import gap in such footwear as joggers — the main Korean export — and plastic sandals, Taiwan's biggest seller.

But importers see it differently. "A \$5 shoe is not a \$20 shoe," they insist. The U. S. industry, they say, may produce more joggers and vinyls, but at substantially higher prices. Americans will, as a result of the Taiwan and Korean cutbacks, buy less, importers predict.

At the same time, they say, Korean and Taiwan producers, seeking the highest return on their shipments, will export more expensive shoes, of a kind more directly competitive with domestically-made footwear.

The Taiwan quota probably will start making itself felt on consumers by fall, with the start of the school year, while the Korean quota's price impact may come as late as next spring, trade sources estimate.

The domestic industry expects to start reaping gains from the quotas by late this year. Meanwhile, however, imports from Korea and Taiwan are likely to reach new highs in calendar 1977, as the two countries race to beat the start of the first quota year.

Under the two agreements, which President Carter has not yet approved, Taiwan's shipments in the first 12 months will be held to 122 million pairs, compared with 156 million imported in 1976. The annual quota will rise by three million pairs in each succeeding 12 months.

Korea will reduce its exports to 33 million pairs, down 11 million from 1976. By the fourth year, its quota will be up to 38 million pairs.

AFFIDAVIT OF MARTIN BLOOM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
SNEAKER CIRCUS, INC., BLAZER SPORTS
INTERNATIONAL, INC. and BOB WOLF
ASSOCIATES, INC.,

77 Civ.

Plaintiffs,

AFFIDAVIT

-against-

JIMMY CARTER, President of the United
States, ROBERT S. STRAUSS, Special
Representative for Trade Negotiations,
STEPHEN J. LANDE, Deputy Special
Representative for Trade Negotiations,
and UNITED STATES INTERNATIONAL TRADE
COMMISSION,

Defendants.

-----x
STATE OF NEW YORK)
) SS:
COUNTY OF NASSAU)

MARTIN BLOOM, being duly sworn, deposes and says:

I am the President of the plaintiff, SNEAKER CIRCUS, INC., and I make this affidavit in support of this motion for a temporary restraining order and preliminary injunction, enjoining and restraining defendants, and each of them, from executing, effectuating or performing any act in furtherance of certain foreign trade quota agreements and understandings with the Republics of China and Korea, or in connection with carrying out any provisions of the same.

SNEAKER CIRCUS, INC. is a seller and distributor of footwear, franchising 47 independent retail stores located in the metropolitan New York area, including New Jersey, with one store located in Florida. It is also involved directly in the operation of several retail footwear stores. Thus, its entire source of business and overriding business interest is in the

sale of footwear at retail.

The footwear which is the subject of the proposed absolute quota constitutes the large majority of the footwear (approximately 80% to 85%) sold by the SNEAKER CIRCUS, INC. retail stores. The sources of this footwear, namely the Republics of China and Korea, are the only sources available at the same quality and quantity necessary for the domestic United States market. There is no other comparable available source. Accordingly, if the proposed quotas are imposed, the attendant substantial reduction in the available supply will deprive this company and its 47 franchisees of a significant source of income. I underscore that each franchised store employs an average of 3 to 4 people and SNEAKER CIRCUS, INC. employs approximately 25 people.

The type of footwear sold by the SNEAKER CIRCUS, INC. franchisees is best described as athletic and other leisure shoes utilizing leather, vinyl, suede and canvas in the upper portion of the shoe. The footwear which will be subject to the quota ("quota shoes") are shoes of this type with leather, vinyl or suede (i.e., non-canvas uppers). The quota shoes represent a large and fast growing portion of the footwear sold by SNEAKER CIRCUS, INC. franchisees, and the United States consumer demand for these shoes has markedly increased within the last year or so.

Sales of quota shoes represent a large portion of the sales of footwear by SNEAKER CIRCUS, INC. franchisees, and their sales of these shoes have been increasing substantially.

The marked increase in demand for these quota shoes is made possible by their availability within the last two years at

middle- popular prices, that is, the retail range between approximately \$10 and \$20. Prior to this time, this type of shoe was manufactured strictly for professional or performance purposes, predominantly in Western and Eastern Europe and these performance shoes sell currently in the United States market at retail prices of \$25 to \$30 and above. These performance shoes carry such branded labels as "Adidas" or "Puma".

Quota shoes utilizing, as I have said, leather, suede or vinyl for uppers, have been made available at moderate- popular prices through their manufacture at high-quality levels in the Republics of China and Korea. The large majority of this footwear sold in the United States market at these moderate- popular prices are imported from these two countries. There is no other practical source for this footwear available. Japan is the only other foreign nation manufacturing and exporting this footwear to any meaningful extent and retail prices for this footwear of Japanese manufacture would be significantly higher than those made in the Republics of China and Korea. Domestically produced footwear of this type is not nearly comparable in quality to that made in the Far East and the domestic production facilities lack the capacity of meeting the current increasing demand. SNEAKER CIRCUS, INC. has purchased this type of footwear manufactured domestically and has had repeated and substantial quality problems. It is unable, realistically, to rely consistently on domestic production of this footwear even to a small extent.

The quota footwear sold by the SNEAKER CIRCUS, INC. franchisees occupies, generally, the lower half of the moderate- popular retail price spectrum, that is, the quota footwear retails at SNEAKER CIRCUS, INC. franchise stores at an average price of approximately \$14 to \$15 per pair. Canvas footwear retails at

an average price of approximately \$6.00 per pair. Its retail competitors selling the same footwear at similar prices, such as Alexander's, Kowat's and local shoe stores are also highly dependent upon imports from the Republics of China and Korea for this footwear. I stress that the entire United States consumer market depends upon the production of these two nations for the large majority portion of this type of footwear. I estimate that in 1977, without the quota restriction, sales of these shoes, which I have described as quota shoes, in the United States will be in excess of 80 million pairs. More than 85% of this demand, again, absent the quota restriction, will be filled by this type of footwear produced in the Republics of China and Korea.

The only conceivable result of the sharp curtailment in available supply of quota shoes attendant upon the imposition of the proposed quotas will be a comparably sharp rise in consumer prices. Currently, this type of footwear manufactured domestically is selling at prices roughly equivalent to the imported performance or professional shoes, namely \$25 to \$35 per pair and more. However, the drastic reduction in supply will not bring about an increase simply in existing retail prices of these shoes domestically produced, but both domestic and imported prices will significantly increase. Far more important for SNEAKER CIRCUS, INC., however, is that foreign manufacturers will decline to produce the lower-priced end of these quota shoes, including children's shoes, and concentrate on the higher-priced portion of the spectrum of these shoes, so as to maximize sales and profits within the absolute quota limits. The consequence, therefore, to SNEAKER CIRCUS, INC. and other retailers selling this footwear at the lower half of its price spectrum will be to have their supply markedly reduced.

SNEAKER CIRCUS, INC. and its franchisees, which are totally dependent for their business on footwear sales, will be unable to meet the sharply rising demand for quota shoes in the United States market and will be relegated to sales of canvas shoes.

Moreover, this will not be a phenomenon of short duration, since I do not anticipate that domestic producers will be able to produce quota shoes with the quality and quantity and at the prices necessary to meet the particular consumer market upon which SNEAKER CIRCUS, INC. relies. Thus, realistically, I can anticipate no other result from the imposition of the proposed absolute quotas, and the attendant reduction in the supply of quota footwear, than irreparable damage to the business of SNEAKER CIRCUS, INC. and its franchisees.

WHEREFORE, it is respectfully prayed that this application be in all respects granted.

Sworn to before me this

31st day of May, 1977

W. M. Weinman
 WENHETH M. WEINMAN
 NOTARY PUBLIC, State of New York
 No. 31-4502821
 Qualified in New York County
 Commission Expires March 30, 1978

Martin Bloom
 MARTIN BLOOM

AFFIDAVIT OF DOMINICK ALBANESE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
SNEAKER CIRCUS, INC., BLAZER SPORTS
INTERNATIONAL, INC., and BOB WOLF
ASSOCIATES, INC.,

Plaintiffs,

77 Civ.

-against-

JIMMY CARTER, President of the United
States, ROBERT S. STRAUSS, Special
Representative for Trade Negotiations,
STEPHEN J. LANDE, Deputy Special Repre-
sentative for Trade Negotiations, and
UNITED STATES INTERNATIONAL TRADE
COMMISSION,

AFFIDAVIT

Defendants.

-----x

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

DOMINICK ALBANESE, being duly sworn, deposes and says:

I am the Secretary of the plaintiff BOB WOLF ASSOCIATES, INC. ("BOB WOLF") and I make this affidavit in support of the instant motion for a temporary restraining order and a preliminary injunction enforcing and restraining defendants, and each of them, from executing, effectuating or performing any act in furtherance of the foreign trade quota agreements and understandings referred to in the complaint, or in connection with carrying out any of the provisions of the same.

BOB WOLF is an importer and wholesaler of footwear. All of its supply of footwear is athletic or other leisure footwear made of leather, suede, vinyl or canvas uppers. Approximately 80% of the footwear sold by BOB WOLF is non-canvas athletic footwear, i.e., with uppers of leather, suede or vinyl, and is imported from either the Republics

of China or Korea. If the import quotas proposed by the President are imposed, this company will be forced out of business.

This company has been in business for approximately 8 years. It sells its footwear at wholesale throughout the United States to some 3,000 customers, most of which are sporting goods and other small retail stores. Both BOB WOLF and its customers are entirely dependant for athletic non-canvas footwear upon the production of the Republics of China and Korea.

There is a large increasing demand in the United States for moderately priced non-canvas athletic footwear. This demand has been met with quality footwear by the production of the two nations that are the subject of the proposed quota. The non-canvas athletic footwear sold by BOB WOLF is a better grade footwear generally in the upper half of the moderately priced range, i.e., it wholesales at an average price of \$9.00 to \$10.00 per pair and retails at an average price of \$20.00 per pair. There is no domestically produced footwear of this type which approaches the quality manufactured in the Republics of China and Korea. Moreover, the domestically produced footwear of this type satisfies no more than 10% to 15% of the total United States consumer demand.

The absolute import quota proposed by the President includes this non-canvas athletic footwear which I have described. Its result will be to substantially reduce the available supply. With no other comparable sources available, both BOB WOLF and its customers will suffer irreparable damage and, in the case of BOB WOLF,

the destruction of its business.

The effect of the proposed quota will be a significantly higher price to the American consumer for the footwear which I have described here - to the extent that it is available. The sharp curtailment of supply and the absence of alternate comparable sources will in fact create such a price increase as to remove this footwear from the reach of most of the American public. I expect therefore that the imposition of the quotas will result in the effective termination of the existing demand for this type of footwear at moderate prices.

Further, since the increased demand for athletic non-canvas footwear has arisen from its use for everyday purposes, much of the vacuum will be filled by imports, rather than domestically produced leather footwear. In short, I cannot see that the proposed quota can, even to a limited extent, benefit the domestic industry.

WHEREFORE, it is respectfully prayed that this application be in all respects granted.

Sworn to before me this

31st day of May, 1977

DOMINICK ALBANESE

NOTARY PUBLIC
Qualification
Commission Expires March 30, 1979

EXHIBIT H SUBMITTED TO THE COURT

7017

Chesser, and Furrow were excused from the meeting. The telephone call to Commissioner Ablondi was concluded.

Messrs. A. Valiunas and B. Hatton, and Mesdames A. Miller, E. Slack, and M. Schweitzer were called into the meeting and responded to questions regarding the draft of the 27th Report on the Operations of the Trade Agreements program. Inasmuch as the report had not been reviewed by the Special Advisor for Trade Agreements or by the Staff Coordinating Committee, the Commission deferred action until the meeting of October 7, 1976. The Secretary was directed to advise the Staff Coordinating Committee and Mr. Hart that the draft report should be reviewed promptly and comments and suggestions furnished to the staff. The Secretary was also directed to advise the Director, Office of Economic Research, that reports should be reviewed by the Staff Coordinating Committee prior to, not concurrent with, submission to the Commission. The OER staff members were excused from the meeting.

OTAP

Mr. A. Malish from the Office of Economic Research, on detail to the U.S. negotiating team on the Multilateral Trade Negotiations in Geneva, Switzerland, was called into the meeting for an exchange of views with the Commission.

MIN

The Commission noted that it had on its agenda action jacket GC-76-111 on the proposed Notice of Release of Comparability Drafts. It was agreed that Mr. Kappler confer with individual Commissioners regarding their questions and reiterate a revised draft notice in an action jacket.

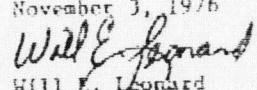
Comparability
Drafts

The meeting was adjourned at 11:35 a.m.

Attest:

Approved: November 3, 1976


Kenneth R. Mason
Secretary


Will E. Leonard
Chairman

October 5, 1976

PRESENT: Commissioners Will E. Leonard, Daniel Minchew, George M. Moore, Catherine Bedell, Joseph O. Parker, Italo H. Ablondi;
Secretary Kenneth R. Mason

The meeting was convened at 9:35 a.m. Mr. C. Gingrich was present in the meeting.

The Commission considered and approved, with changes agreed upon, Minutes the minutes of the meetings of September 21, 23, 28, and 30, 1976. During the consideration of the minutes, the Commission agreed that the Reorganization Coordinating Committee should furnish, to all Commissioners, copies of any memoranda from the Committee to any Commissioner or staff member. The Secretary was also requested to furnish

copies of the letters to the President and the Chairman of the Senate Finance Committee advising them of the action of the Commission instituting the section 201 investigation on sugar. Commissioner Leonard announced that he may send letters to the President and Senator Long noting his objection to the length of time the Commission is allowing for this investigation.

Messrs. E. DeBor and C. Ervin were called into the meeting for a discussion of the date of the hearing to be held on watches (Inv. 332-80). It was moved by Commissioner Bedell, seconded by Commissioner Parker, that a hearing be held on January 4, 1977, and appropriate notice thereof be given. The vote on the motion was: Affirmative--Commissioners Moore, Bedell, and Parker; negative--Commissioners Leonard and Ablondi; abstain--Commissioner Minchew. The motion carried. Messrs. DeBor and Ervin were excused from the meeting.

Watches
332-80

Messrs. I. Raines, E. Wallington, and B. Hatton were called into the meeting for a discussion of the draft submissions of the FY 78 budget. It was moved by Commissioner Minchew, seconded by Commissioner Ablondi, that the Commission approve, subject to editorial correction, the draft submission corresponding to a personnel total of 395 people (\$12,187,000, including the cost of the pay act increases). The vote on the motion was: Affirmative--Commissioners Leonard, Minchew, Moore, Parker, and Ablondi; negative--Commissioner Bedell. The motion carried. Messrs. Wallington and Raines were excused from the meeting.

FY 78
Budget

Messrs. C. Ervin, W. Gearhart, C. R. Johnston, W. Hart, L. Jensen, H. Dueringer, S. Coble, B. Peterson, R. D. Webster, W. Lipovsky, F. D. Foster, and Ms. G. Burns were called into the meeting. The Commission had before it requests for investigations, pursuant to section 201 of the Trade Act of 1974, as amended, on mushrooms and on footwear. It was moved by Commissioner Moore, seconded by Commissioner Parker, that an investigation be instituted on mushrooms, with a hearing beginning on November 11, 1976. The vote on the motion was: Affirmative--Commissioners Leonard, Moore, Parker, and Ablondi; abstain--Commissioner Bedell. (Commissioner Minchew was not present during the vote.) The motion carried. Commissioner Leonard asked the investigative staff to give consideration to a 60-day time schedule on this investigation. It was agreed that the notice of this investigation, modified to note the origin of the investigation as well as the request for expedited action, need not be recirculated through the Commission. Messrs. Jensen, Dueringer, and Lipovsky were excused from the meeting.

Mushrooms
TA-201-17
and
Footwear
TA-201-18

It was moved by Commissioner Parker, seconded by Commissioner Ablondi, that the Commission institute an investigation on footwear, as recommended by the General Counsel in his memorandum of October 1, 1976; the notice of the investigation is to be modified in the same manner as the notice on mushrooms was modified; and, the selection of a hearing date is to be taken up in the afternoon session. The vote on the motion was: Affirmative--Commissioners Bedell, Parker, and

Ablondi; negative--Commissioner Leonard (Commissioners Minchew and Moore were not present during the vote.) The motion carried.

The meeting was recessed at 12:15 p.m.

AFTERNOON SESSION

PRESENT: Commissioners Will E. Leonard, Daniel Minchew, George M. Moore, Catherine Bedell, Joseph O. Parker, Italo H. Ablondi; Secretary Kenneth R. Mason

The meeting was reconvened at 2 p.m. Messrs. R. Roth, E. Easton, L. Furlow, C. R. Johnston, C. Ervin, C. Gingrich, F. D. Foster, J. Cook, J. Hatch, W. Gearhart, and R. D. Webster were present in the meeting.

The Commission resumed its discussion of the date for the hearing on footwear. It was moved by Commissioner Leonard, seconded by Commissioner Minchew, that the hearing be held starting on November 22, 1976. It was moved by Commissioner Parker, seconded by Commissioner Moore, to amend the motion in the nature of a substitute, to start the hearing on December 7, 1976. The vote on the substitute motion was: Affirmative--Commissioners Moore and Parker; negative--Commissioners Leonard, Minchew, and Ablondi; abstain--Commissioner Bedell. The motion failed for lack of a majority. The vote on the main motion was: Affirmative--Commissioners Leonard and Ablondi; negative--Commissioners Minchew, Moore, and Parker; abstain--Commissioner Bedell. The motion failed for lack of a majority.

Footwear
TA-201-18

By unanimous consent the Commission reconsidered its action in the meeting by which it approved the minutes of the meeting of September 21, 1976, so that a statement suggested by Commissioner Bedell could be inserted in the second paragraph of the minutes, regarding the effect of a vote of two affirmative, one negative, one abstaining on a motion adopted in the meeting of September 10, 1976.

Minutes

By unanimous consent the Commission reopened the vote taken in the morning session by which the investigation on footwear was instituted. It was moved by Commissioner Minchew, seconded by Commissioner Moore, that an investigation on footwear be instituted, that the notice, as modified, be issued, and the hearing begin on December 7, 1976. At the request of Commissioner Minchew, the vote on the motion was divided. The vote on that portion of the motion dealing with the institution of the investigation was: Affirmative--Commissioners Minchew, Moore, Parker, and Ablondi; negative--Commissioners Leonard and Bedell. The motion carried. The vote on that portion of the motion dealing with the notice and hearing date was: Affirmative--Commissioners Moore, Bedell, and Parker; negative--Commissioners Leonard and Ablondi; abstain--Commissioner Minchew. The motion carried. Messrs. Furlow, Ervin, Johnston, and Gearhart were excused from the meeting.

Footwear
TA-201-18

The Commission considered a memorandum of September 28, 1976, from the General Counsel and the Secretary relating to the implementation of the Government in the Sunshine Act. Commissioner Leonard suggested that the recommendations of the staff, contained throughout the memorandum, be considered as approved unless objected to by a Commissioner. After discussion, it was moved by Commissioner Leonard, seconded by Commissioner Minchew, that the Commission publish proposed regulations implementing this act, in the Federal Register, not later than October 25, 1976, and publish final regulations not later than December 5, 1976. It was moved by Commissioner Bedell, seconded by Commissioner Parker, to amend the motion in the nature of a substitute, to adopt the time schedule suggested by the staff. The vote on the substitute motion was: Affirmative--Commissioners Moore, Bedell, and Parker; negative--Commissioners Leonard, Minchew, and Ablondi. The motion failed for lack of a majority. The vote on the main motion was: Affirmative--Commissioners Leonard, Minchew, and Ablondi; negative--Commissioners Moore, Bedell, and Parker. The motion failed for lack of a majority. It was moved by Commissioner Minchew, seconded by Commissioner Leonard, that final regulations be published not later than December 13, 1976. The vote on the motion was: Affirmative--Commissioners Leonard, Minchew, and Ablondi; negative--Commissioners Moore, Bedell, and Parker. The motion failed for lack of a majority. Commissioner Leonard asked and received unanimous consent that the staff proceed as expeditiously as possible. Commissioners Leonard and Minchew stated they may issue their own draft regulations for comment. Messrs. Easton and Roth were complimented on the memorandum submitted to the Commission. It was moved by Commissioner Leonard, seconded by Commissioner Ablondi, that a news release on this subject be drafted and circulated in an action jacket by close of business on October 7, 1976. It was agreed, unanimously, that the meeting of October 14, 1976, would be conducted as a mock session under the Sunshine Act. Messrs. Easton and Roth were excused from the meeting. A task force of Messrs. I. Raines, J. Cook, R. Reynolds, and K. Hason were designated to evaluate the various methods of keeping the record of the Commission meetings required by the act.

Sunshine Act

Messrs. B. Hatton, V. J. Adduci, D. Spencer, C. Hamilton, and C. Ramsdale were called into the meeting. The Commission had before it a motion made in the meeting of September 23, 1976, by Commissioner Parker, seconded by Commissioner Moore. Commissioner Parker restated his motion as follows:

Reorganization

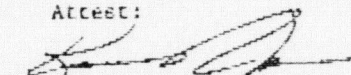
I move that the Office of the General Counsel be reorganized and that the legal responsibility for carrying out section 337 investigations and related preliminary investigations be placed in an Office of Adjudicative Investigations as are described in the documents distributed September 23, 1976.

The vote on the motion was: Affirmative--Commissioners Moore, Bedell, and Parker; negative--Commissioners Leonard, Minchew, and Ablondi. The motion failed for lack of a majority.

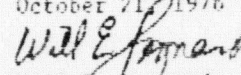
The Reorganization Coordinating Committee presented a flow chart depicting the actions required to meet the January 1, 1977, implementation date established by the Commission. Messrs. J. Conway and L. MacGill of Lodge 2211, American Federation of Government Employees, were called into the meeting. (Mr. R. Duncan, of Local 98L, Graphic Arts International, was not available when summoned to the meeting.) After discussion, Mr. Ramsdale was asked to be prepared to present, orally, an alternative plan for the implementation of reorganization in the Commission meeting to be held on October 7, 1976.

The meeting was adjourned at 6:25 p.m.

Attest:


Kenneth R. Mason
Secretary

Approved: October 7, 1976


Will E. Leonard
Chairman

October 7, 1976

PRESENT: Commissioners Will E. Leonard, Daniel Minchew, George M. Moore, Joseph O. Parker, Italo H. Ablondi; Secretary Kenneth R. Mason. Commissioner Catherine Bedell participated in a portion of the meeting by means of a conference telephone call.

The meeting was convened at 9:45 a.m. Messrs. C. Ramsdale, D. Spencer, V. J. Adduci, B. Ratton, and C. Hamilton were present in the meeting.

Commissioner Leonard directed the Commission's attention to a report of an outside contact submitted by Mr. E. Wallington reporting on a telephone call he had received from Mr. Harry Lamar of the Staff of the Committee on Ways and Means of the House of Representatives. In his telephone call Mr. Lamar asked that Mr. Wallington supply certain information to the Ways and Means Committee on a regular basis on the Commission's expenditures. After discussion, it was agreed that the information be supplied to the Ways and Means Committee and to the Senate Finance Committee. The Chairman agreed to draft a reply for circulation through the Commission.

Messrs. J. Hatch, J. Cook, J. Conway, L. MacGill, and R. Duncan were called into the meeting. The Commission resumed discussion of a proposed reorganization. A telephone call was placed to Commissioner Bedell. A telephone equipped with a speaker attachment was used in the conference room so that the Commissioners and staff members present were able to hear and converse with Commissioner Bedell. After discussion, it was moved by Commissioner Moore, seconded by Commissioner Parker, that the proposal presented by Mr. Ramsdale in the morning session of the meeting be approved for effecting the reorganization of the Commission by January 1, 1977. After extensive discussion, changes to the motion were agreed to. The Secretary was requested to prepare a revised draft of the motion for consideration at the afternoon session.

The meeting was recessed at 12:01 p.m.

The Mobil Corporation again raised its bid for all shares of the Irvine Company, the James Irvine Foundation announced. The newest Mobil bid is \$326.1 million, or \$382.5 a share for the 8.4 million shares outstanding. The Mobil bid tops that made Friday by the Taubman Allen-Irvine group at 40 cents a share. The competitive bidder will have until noon

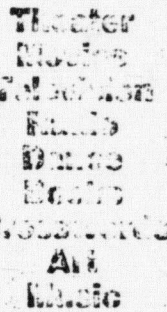
The Norin Corporation of North Miami, Fla., said that its wholly owned subsidiary, Norin Food Products, had acquired 490,433 shares, or 93 percent, of H. G. Parks Inc. at \$10 a share. The Norin offer for the pork sausage company expired last Friday.

Mr. Wiley repeated his suggestion of two years ago that the American Telephone and Telegraph Company's internal structure be changed to create a totally independent subsidiary that would handle all long-distance services offered directly

He also suggested a solution to the problem of assuring full competition in the sale of telephone equipment when the price of that supplied by independent companies is unregulated while that of

He said the United States also agreed to discuss the question of revising the quota upward after 18 months from June 28.

Mr. Wiley also said fragmentation of government interest in international communications could be solved by authorization by Congress for the FCC to participate in international negotiations instead of coming into the picture after agreements are reached.



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U.S. to Resist Spread of Import Quota Curbs

By Hobart Rowen
Washington Post Staff Writer

Treasury Secretary W. Michael Blumenthal yesterday said that the Carter administration will "resist" the spread of import quota restrictions to many more industries.

The United States recently concluded so-called "orderly marketing agreements" (OMAs) with Japan on color TV sets and other Asian nations on shoes, sharply limiting exports to this country.

In his first general press conference since becoming Secretary, Blumenthal defended the agreements on TV sets and shoes as necessary to ward off more drastic protectionist measures.

But he acknowledged that "any restriction (on imports) is a deviation from open trade principles," and added, "we would like to see the spread (of OMAs) to other industries."

Blumenthal admitted that the United States is running such a large trade deficit that "people get concerned" when they see the numbers. He estimated that the deficit for this year would be \$23 to \$25 billion compared with \$9.2 billion last year.

That is \$2 billion more than the deficit estimate Blumenthal made just last week in Japan. But he again insisted that the U.S. competitive position is strong and that, as other major economies improve, U.S. exports will increase, narrowing the deficit. The major reason for the large deficit is the mounting oil bill which is expected to hit \$41 billion this year.

Blumenthal once again stressed that Japan, as a major industrial power, must play a role in "sharing" the worldwide balance of payments deficits caused by high oil prices. Blumenthal broadly intimated that Japan should let the exchange rate of the

yen move higher. That would tend to move the Japanese from surplus into deficit by making their exports more expensive.

He also said it is urgent for the International Monetary Fund to add to its resources through a special fund to be made up in equal parts by members of the Organization of Petroleum Exporting Countries and the Industrial West, and through enlarged deposits (quotas) by member countries.

The Secretary made these observations or comments on other topics:

- He would prefer to see the banks' prime interest rates move down rather than up, but "would be quite satisfied to let market conditions" take care of the recent rise. This represented a softer approach to higher bank rates than that of Office of Management and Budget Director Bert Lance, who said Wednesday they were "unjustified." If the increase is not

warranted, we will "quickly" find out, Blumenthal said.

- The tax reform process is moving slowly, and it will be some weeks before basic decisions are made. Blumenthal said he hoped that tax reform would include real simplification, assure that everyone pays a fair share of taxes, and said some incentives would be provided to induce new capital formation. A reduction in both personal and business taxes is one "alternative" way of accomplishing the latter, he said in response to a question.

- Although both nonfood and food price increases will abate in the second half of the year, the annual rate of inflation around the end of the year will be 6.5 per cent, instead of the 5 to 6 per cent range forecast earlier by the administration. That's "too high," but at least is lower than the 10

per cent annual rate for the first four months, Blumenthal said.

- Administration talks with labor and management to find elements of an antiinflation program on which there could be "joint action" won't produce concrete results until the end of the summer, or in September.

- Among other factory reorganization details, Blumenthal announced that the offices of the Treasury, of the United States and the Director of the Mint would be combined.

In Atlanta, Charles Schultz, chairman of the Council of Economic Advisors, told the National Association of Business Economists that the economy is steadily moving toward a balanced budget in four years.

"The chances are good that the American people can enjoy a long period of stable and sustained economic growth," United Press International quoted Schultz as saying.



W. MICHAEL BLUMENTHAL
... defends shoe, TV pacts

DEPARTMENT OF THE TREASURY

PRESS BRIEFING with
SECRETARY BLUMENTHAL

Thursday, June 2, 1977

10:30 a.m.

Department of the Treasury
Room 4121
15th and Pennsylvania Avenue
Washington, D.C.

1 There is one more thing to be said about the trade
2 deficit and that is that a trade deficit of some kind for
3 the United States is, if it isn't excessive, perhaps not
4 too surprising and that may continue for some time particularly
5 if you consider we can have a very favorable impact on invis-
6 ibles and other items that go into the total balance on cur-
7 rent account.

8 What is more worrisome is to have a very large trade
9 deficit so that the total account deficit which this year may
10 be at \$12 billion -- and we are not too worried about that
11 because it is helpful to developing countries in the recovery
12 of their economies. If that were to continue indefinitely,
13 it would be considered, but we don't expect it to continue
14 indefinitely.

15 QUESTION: As former trade negotiators, what is
16 your opinion of the current deal Strauss is negotiating? Do
17 you have any concern about that? Would you like to see any
18 measures used?

19 SECRETARY BLUMENTHAL: I don't believe in protection-
20 ism at all. Of course, any restrictions are a deviation from
21 the goal that we all share, I think, which is to have open
22 unencumbered trade. I think it is a question of alternatives
23 and I think the President has clearly demonstrated his commit-
24 ment, which he has spoken of on a number of occasions, to main-
25 tain to a maximum extent that open system by choosing not to

1 accept either quotation, not to accept higher tariffs and broad
2 scale restrictions as was suggested to him in the case of
3 shoes and sugar and also in the case of color televisions,
4 but rather to negotiate on a more flexible basis to the most
5 limited voluntary arrangement that was necessary in order to
6 relieve the great pressures that existed on the American economy
7 and to take care of some of those industries in which many
8 jobs were threatened. I think Ambassador Strauss' success
9 in carrying that out is a very good thing.

10 Clearly this is not something that we would like
11 to see spread to many other industries and I am sure we would
12 resist that, but in those particular instances it was a mini-
13 mum that in my judgment was required under the circumstances.

14 QUESTION: Are you urging West Germany and Japan
15 to cut their current account balances for exchange rates ap-
16 preciation? What other methods can they use if the exchange
17 rate appreciation does not fulfill it?

18 SECRETARY BLUMENTHAL: I think each case is a little
19 different. There are a variety of things that could be done.
20 Certainly if the exchange rates are allowed to float freely
21 and they appreciate their currency, currency appreciation,
22 that will be helpful. Certainly stimulation of the domestic
23 economy so that their import demand will grow will be helpful.
24 Third, in certain instances for some countries, additional
25 support of international financial institutions or contributions

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SNEAKER CIRCUS, INC., BLAZER SPORTS
INTERNATIONAL, INC., and BOB WOLF
ASSOCIATES, INC.,

Plaintiffs,

-against-

JIMMY CARTER, President of the United
States, ROBERT S. STRAUSS, Special
Representative for Trade Negotiations,
STEPHEN J. LANDE, Deputy Special Repre-
sentative for Trade Negotiations, and
UNITED STATES INTERNATIONAL TRADE
COMMISSION,

Defendants.

77C 1135

A M E N D E D
C O M P L A I N T

Plaintiffs Demand
Trial By Jury

Plaintiffs allege:

JURISDICTION AND VENUE

1. Jurisdiction is vested in this Court under the provisions of 28 U.S.C., §§ 1331, 1337, 2201, 1346; 15 U.S.C., §15. The amount in controversy exceeds \$10,000.00, exclusive of interest and costs.

2. Venue lies in this Court under 28 U.S.C., §1391(e), as the defendants are officers or employees of the United States, or an agency thereof, and one of the plaintiffs resides in this District and no real property is involved in this action.

THE PARTIES

3. Sneaker Circus, Inc. ("Sneaker Circus") is a New York corporation with its principal place of business located at 105 South Cottage Road, Valley Stream, New York, in the Eastern District of New York. It is engaged in the business of selling footwear at retail to the public, and primarily the kinds of footwear hereinbelow referred to, manufactured in the Republics of China and Korea.

4. Plaintiff Blazer Sports International, Inc.

("Blazer") is a Connecticut corporation with its principal place of business located at Field Point Drive, Greenwich, Connecticut. It is engaged in the business of selling and distributing footwear, primarily at wholesale, throughout the United States, and the kinds of footwear hereinbelow referred to, manufactured in the Republics of China and Korea.

5. Plaintiff Bob Wolf Associates, Inc. ("Bob Wolf ")

is a California corporation with its principal place of business located at 10361 Stanford Avenue, Garden Grove, California. It is engaged in the business of importing into the United States and selling and distributing throughout the United States footwear of the kinds hereinbelow referred to, including footwear manufactured in the Republics of China and Korea.

6. Defendant Jimmy Carter ("the President") is the President of the United States.

7. Defendant Robert S. Strauss ("Strauss") is the Special Representative for Trade Negotiations, appointed by the President in such capacity pursuant to the provisions of 19 U.S.C., §2101, et seq. (hereinafter the provisions of said statute are referred to as the "Trade Act"), and specifically §2171 thereof.

8. Defendant Stephen J. Lande ("Lande") is the Deputy Special Representative for Trade Negotiations, appointed by the President pursuant to the provisions of the Trade Act.

9. Defendant United States International Trade Commission ("ITC") is a governmental agency organized pursuant to the provisions of 19 U.S.C., §1330, with duties, functions and powers as set forth in 19 U.S.C., §1330, et seq.

COUNT I

10. On or about August 20, 1975, a petition was filed by the American Footwears Industries Association, the Boot and Shoe Workers Union, and the United Shoe Workers of America, seeking the institution of an investigation pursuant to §2251 of 19 U.S.C. by the ITC. The specific relief requested by the petition was quantitative restrictions on non-rubber footwear on a product-by-product, country-by-country, and pairage basis that would limit the importation of foreign footwear to levels that prevailed at the end of the 1968 Kennedy round of tariff reductions.

11. On or about September 17, 1975, investigation was instituted by the ITC. It held hearings from December 2 to December 8, 1975, at which testimony was presented. On or about February 20, 1976, the ITC issued its report to the President, finding that the footwear which was the subject of the investigation and report " . . . is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry . . .", producing footwear directly competitive with the imported footwear, and the ITC recommended, in a split determination, the imposition of certain rates of tariffs, while rejecting an absolute ta.

12. On or about April 16, 1976, the then President of the United States, Gerald R. Ford, determined that expedited adjustment assistance would be the most effective remedy for the injury suffered by the United States footwear industry and its employees, and that the imposition of import relief would not be in the national economic interest.

13. On or about September 28, 1976, the United States Senate Committee on Finance passed a resolution as follows:

" . . . That (a) pursuant to section 201(b)(1) of the Trade Act of 1974, the United States International Trade Commission shall promptly make an investigation to determine whether footwear is

being imported into the United States in such increased quantities as to be a substantial cause [of serious injury], or threat thereof . . . to the domestic industry producing an article like or directly competitive with the imported footwear. For purposes of this resolution, the term 'footwear' means articles classified under items 700.05 through 700.85, inclusive (except items 700.51, 700.52, 700.53 and 700.60), of the Tariff Schedules of the United States (19 U.S.C. 1202).

(b) It is the sense of the Committee that changed circumstances, including increasing imports and rapidly deteriorating economic conditions in the domestic footwear industry, constitute good cause, within the meaning of section 201(e) of such Act, to commence an investigation."

14. The footwear referred to in the above quoted Senate Finance Committee Resolution, and which was the subject of the investigation by the ITC and report to the President referred to below, was the same kind, or essentially the same kind, of footwear as was the subject of the investigation and report by the ITC to the President referred to above.

15. Pursuant to the resolution of the Finance Committee quoted above, the ITC, on or about October 5, 1976, instituted an investigation and announced that "good cause" existed within the meaning of §2251(e) of the Trade Act to reinvestigate the same subject matter within one year of reporting to the President with respect to the prior investigation. The said announcement was made without evidence, investigation, notice, hearing or opportunity to be heard as to whether "good cause" in fact existed within the meaning of §2251(e) of the Trade Act.

16. Several private organizations petitioned or requested the ITC to carefully investigate, or to hold hearings respecting, the issue whether "good cause" existed for reinvestigation by the ITC within one year of the issuance of its last report to the President respecting the same subject matter.

17. The ITC failed or refused to hold any hearings, including public hearings, as provided in Subsection (c) of §2251

of the Trade Act respecting the issue of whether "good cause" existed within the meaning of Subsection (e) thereof for such reinvestigation.

18. On or about October 12, 1976, the ITC published a notice of a public hearing to determine the issue whether non-rubber footwear of the kinds specified in the aforementioned Senate Finance Committee Resolution was being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic footwear industry within the meaning of Subsection (1) of §2251 of the Trade Act. Pursuant thereto, public hearings were held during the period December 7 - December 9, 1976.

19. On or about February 8, 1977, the ITC made findings and a report to the President determining that the items of footwear which were the subject of the said investigation and hearing, as requested by the Senate Finance Committee, are being imported into the United States " . . . in such increased quantities as to be a substantial cause of serious injury to the domestic industry . . ." producing like kinds of footwear or footwear directly competitive with the imported articles.

20. The said findings and report to the President by the ITC were not based on any new, substantial and convincing evidence in support of a finding that the issue of whether increased quantities of footwear which was the subject thereof was being imported so as to be a "substantial cause of serious injury" within the meaning of Subsection (b)(1) of §2251 of the Trade Act, and the said findings and report made by the ITC were based, essentially, on the same evidence as existed in the prior report to the President referred to above and made on or about February 20, 1976.

21. Pursuant to the said findings and report of the ITC made on or about February 8, 1977, it recommended the imposition of a tariff-rate quota system for the ensuing five-year period,

applied to the footwear imports from any country, with existing quotas and increased rates for such footwear importation outside quota limits. The ITC specifically recommended against the imposition of an absolute quota, which it stated could eliminate imports as a competitive force above the level of the quota.

22. On or about April 1, 1977, the President made a determination rejecting the recommendations of the ITC by way of the imposition of a tariff-rate quota system, and proclaimed import relief by directing the defendant Strauss to negotiate agreements with appropriate foreign exporting countries. The determination made by the President and published, was not in compliance with the provisions of Subsection (b) (1) of §2252 of the Trade Act.

23. Moreover, the provisions of Subsection (b) (1) of §2253 of the Trade Act were not complied with in that the President did not transmit the requisite document provided for therein to Congress, nor did he state the reasons for the difference between the action proclaimed or taken by the President and that taken by the ITC within the said Subsection (b) (1) of §2253.

24. In or about the month of May 1977, the defendant Strauss directed and instructed the defendant Lande to enter into negotiations with representatives of the governments of the Republics of China and Korea aimed at arriving at agreements imposing, effectuating and maintaining absolute quotas above certain levels of imports of the kinds of non-rubber footwear which were the subject of the ITC investigations and reports to the President. Pursuant thereto, the defendant Lande entered into such negotiations and arrived at understandings and agreements reflected in an exchange of notes between the government of the United States on the one hand, and the governments of the Republic of China and Korea on the other, imposing absolute quota restrictions on imports of the footwear from the said countries above certain specified levels.

25. In connection with the determination made by the President respecting the imposition of absolute quotas as contained in the aforementioned agreements and understandings, the President failed to comply with the provisions of Sub-Section (c) of § 2252, including subdivisions (3), (4), (5), and (9) thereof. Specifically, among other things, the President failed to consider and take into account the following:

(i) That the difficulties of the domestic footwear industry are not substantially caused by import competition of the subject footwear which has not been efficiently produced domestically, and certainly not by imports thereof from the Republics of China and Korea.

(ii) That increased imports of the subject footwear are the result of a vacuum that existed in domestic footwear production of lower-priced athletic leisure and similar type footwear which, in large part, constitutes the subject footwear, and which vacuum has been enlarged by increased demand for such footwear in recent years.

(iii) That no effective domestic industry producing such footwear exists, and no realistic prospect exists that one will be created as a result of the proclaimed import restrictions so that demand for this type of footwear will largely remain unsatisfied.

(iv) That domestic production of the subject footwear will not effectively replenish the available supply of such footwear as reduced by the proclaimed import restraints.

(v) That prices to consumers of such footwear on a retail level will substantially increase.

(vi) That any benefit derived by increased production by the domestic industry and increased employment therein will be far outweighed by the attendant reduction in

competition from imported footwear, increased prices and a decrease in the available supply of the subject footwear.

(vii) That recently especially during the period intervening between the rejection in April 1976 of the report and recommendation of the ITC, and the time of the report and recommendation of the ITC in February 1977, there has been no absolute increase in imports within the meaning of the Trade Act. Rather, domestic production and employment therein have increased and domestic production of the subject footwear relative to imports thereof have improved, or remain the same.

26. In addition, the maximum relief provisions contained in Subsection (d) (2) of § 2253 of the Trade Act have not been complied with in that the import relief proclaimed by the President does not permit the importation of quantity or value of the subject footwear which is not less than the quantity or value thereof imported into the United States during the most recent period which the President determines is representative of imports of such footwear. The President made no such determination and, further, the absolute quotas contained in the aforesaid agreements and understandings are substantially below any previous representative period of such imports, so that the effect of the presidential determination imposing import restraints is not to assist domestic industry, but to preclude foreign importation thereof.

27. The effect of the absolute quotas to be imposed by the said agreements and understandings will be to substantially reduce the importation of the subject footwear into the United States, manufactured in the Republics of China or Korea, namely, a reduction by approximately one-third of all such footwear

presently being imported from the Republic of China, and a reduction by approximately one-half of all such footwear presently being imported from the Republic of Korea.

28. The President and/or the defendants Strauss and Lande have announced and/or expressed their intent to cause the said agreements and understandings to be entered into and executed by the Government of the United States, and, upon information and belief, the execution and entering into of the said agreements is imminent. The exchange of notes embodying the terms and provisions of the said agreements and understandings demonstrates the commitment of the governments of the United States and the Republics of China and Korea to enter into the same as binding agreements and preparations for the execution thereof have been and are presently being made, and, it is contemplated that the said agreements and understandings will be entered into and effectuated on or before June 15, 1977.

29. In the event such agreements and understandings are executed and entered into and the absolute quotas provided for therein effectuated, the plaintiffs, and each of them separately will be seriously and irreparably harmed and damaged by way of a substantial reduction on a continuing basis of virtually their entire source of supply of the footwear which constitutes, in each case, all or virtually all of the footwear with which they deal in their respective businesses, and further, by way of substantially increased costs to each of them for such of this footwear which is available. The attendant loss and damage to their business will, of necessity be substantial and irreparable. The structure of the industry, manufacturing, selling and distributing the subject footwear, including the domestic industry, is such that alternate sources of supply

sufficient to meet the demands of the customers of the plaintiffs will not reasonably and practicably be available. Prices to the consuming public in the United States for such footwear will be substantially increased. The availability of the subject footwear will be substantially decreased and, upon information and belief, some categories of this footwear, particularly the lower priced categories, will become virtually unavailable to the consuming public in the United States.

30. This is an action for a declaratory judgment pursuant to 28 U.S.C. § 2201 that (1) that the Acts of the ITC in proceeding with a reinvestigation of the same subject matter as the previous investigation as aforesaid without the existence of "good cause" and a determination that the same exists within the meaning of the statute, and without a hearing notice thereof and an opportunity for interested parties to be present and to be heard and present evidence at such hearing respecting the issue of "good cause," are in violation of the provisions of the Trade Act and accordingly are null and void as is the subsequent findings and report of the ITC to the President; (2) that the findings, report and recommendations of the ITC to the President made on or about February 8, 1977 were not based upon new, substantial and convincing evidence; (3) that the rejection by the President of the said recommendations of the ITC and the President's determination and proclamation to negotiate agreements, pursuant thereto, imposing absolute quota restrictions on the importation of the subject footwear from the Republics of China and Korea, were in violation of the provisions of the Trade Act, and an unconstitutional encroachment by the President upon the powers of Congress derived under Article 1, § 8 of the United States Constitution, and accordingly, null and void; (4) that

the failure by the President to make a determination and publish the same in compliance with the Trade Act was in violation of the provisions of that statute; (5) that the failure of the President to transmit the requisite document to Congress and to state the reasons for his proclaiming a different course of action than that recommended by the ITC, as provided in the Trade Act was in violation thereof; (6) that the failure of the President to take into account the explicit consideration delineated by Congress in Subsection (c) of § 2252 of the Trade Act, is in violation thereof, and (7) that the failure of the President to comply with the maximum relief provisions contained in Subsection (d)(2) of § 2253 of the Trade Act is in violation thereof. Pending the final determination of this lawsuit a temporary restraining order and a preliminary injunction is requested to maintain the status quo and prevent the irreparable harm and injury alleged above.

COUNT II

31. Plaintiffs repeat each and every allegation hereinabove set forth in paragraphs 1 through and including 29, as though more fully set forth herein at length.

32. In the absence of congressional authority, and, specifically, apart from any authority granted by the Trade Act, the aforesaid agreements and understandings, and the proposed agreements to be entered into in binding form between the government of the United States, on the one hand, and the governments of the Republics of China and Korea on the other, imposing import restrictions, and, specifically, imposing the absolute quota restraints as aforesaid, are in violation of §1 of the Sherman Act (15 U.S.C. §1) as they are in restraint of United States Foreign and Interstate Commerce.

33. In order to avoid the irreparable harm and injury alleged above, plaintiffs request injunctive relief pursuant to § 16 of the Clayton Act (15 U.S.C. § 26).

COUNT III

34. Plaintiffs repeat each and every allegation hereinabove set forth in paragraphs 1 through and including 29, as though more fully set forth herein at length.

35. On or about October 30, 1947, the General Agreement on Tariffs and Trade ("the GATT"), a multilateral agreement, was concluded and on or about January 1, 1948 the United States acceded and became a party to its terms and provisions.

36. On or about March 2, 1967, the Republic of Korea acceded to the GATT and became a party to its terms and provisions and by protocol adopted on or about April 14, 1967, the United States agreed to the accession of the Republic of Korea and its becoming a party to the GATT.

37. On or about November 28, 1956, the United States and the Republic of Korea became parties to the Treaty of Friendship, Commerce and Navigation ("the Friendship Treaty"), a bilateral treaty and the same was ratified by the United States Senate on or about November 7, 1957.

38. The aforesaid determination of the President and the said agreements and understandings imposing import quotas violate the provisions of the GATT and specifically Article I, Paragraph 1, Article XI, Paragraph 1 and Article XIII, Paragraph 1 thereof.

39. The aforesaid determination of the President and the said agreements and understandings imposing absolute quotas violate the provisions of the Friendship Treaty, and specifically Article XIV, Paragraphs 1, 2, 3 and 5.

40. Accordingly, the said determination and the said agreements and understandings are invalid and null and void.

WHEREFORE, plaintiffs demand judgment.

1. For a declaratory judgment that the findings, reports and recommendations of the ITC to the President made on February 8, 1977 and the determination and proclamation of the President directing the making of orderly marketing agreements, and the agreements and understandings arrived at pursuant thereto, as well as the proposed binding agreement, are invalid, unconstitutional and null and void, and that declaratory judgment be rendered as specifically requested in paragraph 30 above; and further that the said determination of the President and the said agreements and understandings are null and void as in violation of the GATT and of the Friendship Treaty;

2. That the defendants be permanently enjoined from entering into, executing or in any way effectuating the aforesaid agreements and understandings;

3. That pending the determination of this action defendants and all persons acting in concert with them be temporarily enjoined and restrained from executing, entering into or in any way effectuating the said agreements and understandings and from taking any steps in furtherance of the same.

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